A HISTORY OF CONSTITUTION MAKING IN ILLINOIS

by

Janet Cornelius

With an Introduction

by

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Prepared for the Illinois Constitution Study Commission

Thomas Lyons, Chairman
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FOREWORD

As Illinois prepares to convene a Constitutional Convention on December 8, 1969, it is well that we have available an-up-to date documentation of the history of constitutional revision in the state.

As the study shows, Illinois has had a long and involved history of efforts for constitutional change. These have met with mixed reactions. At least in recent years, failure has been more common than success.

But for the delegates and others involved in various capacities in the 1969 Constitutional Convention, there is much to be learned from the past. With this in mind, the Institute of Government and Public Affairs is glad to make this comprehensive analysis of the history of constitution making readily available.

The history is one of several projects undertaken by the Institute as the staff for the Illinois Constitution Study Commission. This Commission was created by the legislature to make the necessary preliminary preparations for the Constitutional Convention. The Institute gratefully acknowledges the financial support for this project from the Commission and its Chairman, Thomas Lyons, and its Co-Chairman, Senator Terrel Clarke.

The principal author is Mrs. Janet Cornelius, a graduate student in the Department of History at the University of Illinois, Urbana. She was assisted by Richard J. Carlson, research assistant in the Institute, who prepared the concluding chapter. Consulting on the project was Professor Robert M. Sutton of the Department of History. The contributions of all three are gratefully acknowledged.

The Institute was also glad that Samuel W. Witwer agreed to write the introduction to this volume. Mr. Witwer, a Chicago attorney, has long been a strong advocate of constitutional reform in Illinois. In fact, he has been a participant in many of the more recent events reported in this study. We are grateful for his fine contribution.

Others have also participated in the preparation. Particular acknowledgement should be given to Mrs. Jean Baker of the Institute staff for preparing the manuscript for publication. Also participating in the editing phase were Mrs. George Ranney and Miss Nancy Fahrnkopf.

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INTRODUCTION

by

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While the concept of a higher law, binding on ruler and ruled alike, has found expression at intervals in most of recorded history, the written constitution is of relatively recent origin and is essentially an American invention. Although scholars differ on the ideal form, there is general agreement that a constitution is an accepted body of organic laws which structures the government of a state; limits the powers of the legislative, executive and judicial branches; and guarantees the rights, immunities and liberties of the people. Such a constitution can exist and indeed be effective though not reduced to writing, as demonstrated by the experiences of England and other nations which have unwritten constitutions. In fact, the reduction of constitutional ideas to writing, Magna Carta and several ancient legal codes notwithstanding, has been the exceptional practice, not the rule.

But Americans see a constitution as something which should rest upon a more certain basis than tradition, custom and precedent. From the earliest days of the American experiment in government, the notion that the "higher law" should be "written law" became a fundamental pillar of our political system. Since the signing in 1620 of the Mayflower Compact, the colonies and, in turn, all of our states and the federal government adopted written formulations, stating what it was that a government might or might not do and defining what was meant by the inalienable rights of its citizens.

By inherent nature, unwritten constitutions evolve slowly, but they also evolve continuously, affording some degree of adaptability to changing needs. On the other hand, the process of adopting or revising written constitutions is episodic, occurring only at intervals. Particularly when the "reduction to writing" phase leads to excessive detail and wordiness the result can be marked constitutional rigidity which can be overcome only by an enlightened use of a workable amending article in the document itself.

Another distinctive characteristic of American constitution making has been its high degree of citizen involvement. Every American state constitution, save one, expressly recognizes that all political power is derived from the people, affirming the words of the Declaration of Independence that "...to secure these rights. . .governments are instituted among men deriving their just powers from the consent of the governed." The New York constitution, the exception, clearly implies it. Implementing this cardinal belief concerning the source

of political power are procedures in practically all states, involving people at every stage of constitution making. The chosen vehicle has been another American innovation, the constitutional convention. Almost uniformly such conventions are "called" or convened by vote of the people. Then "citizen-delegates" are elected by the people to draft the fundamental law. In time the work product of the convention is submitted to the people for ratification. Such constitutional conventions have been the principal means utilized in writing new organic laws and revising the old, and to date the states have held more than two hundred conventions. Citizen participation is equally basic in adopting legislatively initiated constitutional amendments, this process likewise requiring voter approval. American constitutions are indeed people's documents.

Justice Cardozo once wrote, "A constitution states, or ought to state, not rules for the passing hour, but principles for an expanding future." The 1870 Constitution was not so drafted. It was deliberately fashioned so as to shackle the hands of those entrusted with public authority, reflecting the then popular distrust of the executive, legislative and judicial departments of government. It was weighed down with detail and provisions customarily found in statutes and ordinances. It embodied not only the wise federal system of checks and balances but also an inner structure of checks and balances. Above all, it was written to meet the needs of a rural and agrarian society, not our present complex urbanized and industrialized community. Tremendous changes have occurred in the intervening years including a depression of world-wide magnitude, global wars of unsurpassed destruction, revolutionary advances in communications, transportation, technology, vast changes in the scope and character of public education, the coming of the Atomic Age, major migrations of populations from rural to urban to suburban areas, the growth of huge cities and in turn their partial obsolescense, to mention but a few. Most of the vexing problems now confronting every branch of state and local government relate to one or more of these developments.

Yet, with the single exception of the judicial branch of government which underwent reorganization following adoption of the Judicial Amendment in 1962, Illinois' basic government has remained static since 1870. This has been due to the state's feeble ability to amend or revise its Constitution of 1870 except on relatively rare occasions. Contrary to Illinois' experience in the nineteenth century, the people of the state have had but limited chance in the twentieth century to reshape their constitutional law by the convention method. There has been one convention since 1870 and the revisions proposed by that convention were decisively rejected in 1922.

Prior to adoption of the so-called "Gateway" amendment in 1950 the revision of the constitution in a piecemeal manner seemed equally

unattainable. All efforts in that regard after 1908 had failed largely because of the large number of voters who went to the polls at general elections and failed to vote on constitutional amendments then proposed. Under court rulings they were counted, in effect, as "no" voters in determining whether a particular amendment had been approved by "a majority of the electors voting at the said election," the referendum requirement of Article XIV of the Constitution. The chapter of this study concerning the post-Gateway developments wisely deals with a critical period in the history of Illinois constitution making. While it is true that little change in substantive constitutional law, other than the Judicial Amendment, was achieved in the eighteen years which followed adoption of the Gateway Amendment, the numerous "Blue Ballot" campaigns were of crucial importance in setting the stage for the successful convention call of 1968. By means of those campaigns, involving an unprecedented unity of effort by political leadership, most major farm, labor, business and civic organizations, the mass media and thousands of dedicated citizens, the state was for the first time alerted to the inadequacies of its obsolescent constitution and the critical need for its prompt revision. Moreover, until reapportionment of the state's senatorial districts, from which are chosen the constitutional convention delegates, any proposal to call a convention would have encountered strenuous urban opposition. Not until after the invoking of the "one man, one vote" principle by the courts was this roadblock to a convention overcome.

Possibly the most significant contribution of this history will be the light it throws on the quality and type of convention which must be held in 1970 if Illinois is at last to have a modern and serviceable constitution. The account of the 1869-70 constitutional convention and subsequent developments should make clear the costs to a state when organic law is written with prolixity and in excessive detail. Similarly, her interesting accounts of the unsuccessful conventions of 1862 and 1920-22 should demonstrate the futility of expecting a soundly drafted constitution to emerge from an unsoundly structured convention. History in Illinois and elsewhere shows that conventions torn with partisan or sectional strife, or controlled by or submissive to any interest other than the broad public interest, have little chance of success. Those state constitutional conventions that have viewed their function to be essentially legislative, to deal with the immediately pressing or only transiently significant issues of government or public policy seldom have been successful in securing ratification of their work or in drafting constituions of excellence and distinction.

Twenty-five years ago, the late Kenneth C. Sears, a leading constitutional scholar whose studies have been greatly influential in bringing about needed constitutional reform, declared: "Illinois,

everything considered, is in the worst position of any state of the Union." This charge remains valid today and whether it will continue to be valid will depend upon the outcome of the pending convention.

The convention soon to assemble represents the culmination of a long, arduous and often discouraging struggle in which literally generations of Illinois' citizens have participated. Therefore, it should be viewed for what it is, a once-in-a-lifetime opportunity demanding the best possible convention within the capacity of the state to conduct. A convention of such quality will most likely be assured if the citizens of Illinois now approach the tasks ahead in the spirit and with the high purpose which characterized the action of the framers of the 1818 Constitution. A news item from the Illinois Intelligencer of September 2, 1818, referred to by Mrs. Cornelius in her history, reveals the mood and attitude which prevailed at the time of the state's first constitutional convention. It tells how the citizens of Kaskaskia, the old French town and first capital, held an impromptu celebration upon the completion of the drafting of the Constitution of 1818, and the adjournment of the first convention:

> ...Upon the signing of the constitution, and the convention being about to adjourn they were invited by the committee of arrangements to join in the feu de joie.
>
> The field piece was placed in front of the capitol, the military officers a few paces in its rear--the governor, secretary, delegate to congress, and most of the territorial officers, accompanying the members of the convention, took their positions a few paces in the rear: The salute was commenced--20 rounds were fired.
>
> This was truly a proud day for the citizens of Illinois--a day on which hung the prosperity and hopes of thousands yet to follow--a day which will long be remembered and spoken of with enthusiastic pride; as a day connected with the permanent prosperity of our literary, political and religious institutions--as the main pillar in the edifice of our state independence, and justly the basis of our future greatness.

The great civic enthusiasm, the deep sense of historic mission and the obvious commitment to excellence which then prevailed, are qualities equally valid, relevant and needed today, as they were decisive in 1818 when Illinois attained statehood and adopted for the first time a "higher law" for this proud state.

I

THE FRONTIER CONVENTION OF 1818

The convention that wrote the Constitution of 1818 with which Illinois moved from territorial status into statehood, was neither called by the voters nor required to submit its work to them for approval. When the territorial legislature, elected before statehood was an issue, requested the United States Congress for permission to hold a constitutional convention, the population of the territory had not yet been officially established at 60,000, the number suggested for statehood by the Northwest Ordinance, or even 35,000, the ratio of Congressional apportionment at the time. Inhabitants of Illinois Territory were concentrated in the lower third of the state along the Mississippi and Wabash-Ohio Rivers--concentrated, however, only to the extent of reaching a population density of eight to the square mile in some areas. In small numbers and scattered settlements, and with varied backgrounds, interests, and ambitions, the inhabitants of Illinois could not organize en masse to promote their territory's becoming a state. Instead, one man, Daniel Pope Cook, pushed effectively for statehood at a time when some hoped a state constitution might settle the burning question of the future of slaves in Illinois.[1]

The Movement for Statehood

In November, 1817, Cook, ambitious twenty-year-old owner of the only newspaper then published in the territory, the Western Intelligencer, urged in his paper that Illinois become a state. The territorial governor suggested that a census be taken as a first step in the process, but the territorial legislators, led by Cook, decided not to wait. They adopted a memorial to Congress which estimated Illinois' population at 40,000 and requested her admission as a state.[2]

This haste seemed necessary. Several features of the territorial government galled the citizens, notably its inability to enforce justice and the governor's absolute veto over the legislature, but most pressing for change was its equivocal stand on slavery.[3] The Northwest Ordinance of 1787 had prohibited slavery, but Illinois had been a county of Virginia, and when Virginia ceded Illinois to the United States in 1784

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[1]Solon J. Buck, Illinois in 1818 (2nd ed. rev.; Urbana: University of Illinois Press, 1967), pp. 207-22. This account draws heavily on Buck's Chapter 8, "The Movement for Admission."

[2]Western Intelligencer, December 4, 1817. Photostatic copies of this paper can be found in the Illinois Historical Survey, Urbana, and in the Illinois State Historical Library, Springfield.

[3]Buck, pp. 214-16.

it did so on condition that the inhabitants would have their "possessions and titles," which included slaves, confirmed to them.[4] Since many did own slaves, the Northwest Ordinance was interpreted as forbidding only the future introduction of slaves. Then in 1805 and 1807 territorial legislatures passed laws binding whole families of Negroes to long terms as "indentured servants" in the territory.[5]

The equivocal situation was exacerbated by the westward movement of the U. S. population. Both proponents and opponents of slavery wanted to develop the state and attract settlers. With slavery neither totally prohibited nor fully allowed both hoped they might prevail. Those favoring the repeal of the slavery prohibition disliked seeing wealthy slaveholders pass through Illinois to settle in Missouri, which was likely soon to become a slave state. Anti-slavery men felt Illinois would prosper without the institution but might be tempted to allow it if Missouri achieved statehood first and prospered under the slave system.[6]

For this reason Illinois raced Missouri to statehood. Missouri began her movement for statehood a month or two earlier, but Congress passed an enabling bill for Illinois' convention first, and President Monroe signed it April 18, 1818. Illinois was to elect 33 delegates[7] in July who would convene in August. Illinois would become a state first if it produced evidence of a population of 40,000 and then a constitution acceptable to the U. S. Congress.[8]

Choosing Convention Delegates

Little is known of the campaign for the election of delegates except from letters written during the campaign to the Intelligencer; judging from these letters, the slavery question played an important part in the selection of delegates. A May 27 letter signed "The People" said that "the object which most interests the public mind, with regard to the approaching election for members to the convention, is to know whether they are in favor of the toleration or the prohibition of slavery."[9] The extreme pro-slavery men said little in print in support of their cause, but an examination of the retorts of the anti-slavery writers suggests that the pro-slavery arguments stressed the greater revenue Illinois would gain from rich slaveholders. The part slavery played in some areas in the selection of delegates became evident during the convention, when the representatives of Union, Johnson, and Edwards

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[4]Emil Joseph Verlie, (ed.), Illinois Constitutions (Springfield: Trustees of the Illinois State Historical Society, 1919), p. xvii.

[5]Theodore Pease, The Story of Illinois (3rd ed. rev.; Chicago: University of Chicago Press, 1965), pp. 68, 72.

[6]Buck, p. 215.

[7]Buck, pp. 228, 309, reviews the apportionment for delegates.

[8]This enabling act is reprinted in Verlie, pp. 15-19.

[9]Illinois Intelligencer, May 27, 1818. The name was changed from Western Intelligencer to Illinois Intelligencer in anticipation of statehood.

counties constantly voted on the anti-slavery side in convention issues, while the Gallatin, Randolph, and Jackson county representatives voted consistently for the recognition of indentured servitude and slavery in Illinois.[10]

There is no evidence that political parties were a factor in the campaign, although two factions which were to play a large part in the political history of Illinois for the next decades were already forming.[11] Apart from the slavery issue, personality and campaigning techniques played the largest part in determining the candidates selected. A wide personal acquaintance in his area was necessary for a delegate's candidacy, and campaigning was largely carried on by door-to-door canvassing. This may explain the presence at the convention of three doctors, with their naturally wide acquaintance, and suggests why five of the fifteen commissioners taking the census in Illinois during the campaign were elected as delegates to the convention.[12]

The method of voting for convention delegates on July 6, 7, and 8 was viva voce; the vote of each elector was recorded and proclaimed aloud by his county sheriff. The viva voce system had been substituted for voting by ballot in the territory by its legislature in 1813, both to prevent embarrassing those who had not learned to read and write, and also to prevent bribery and corruption by "electioneering zealots," even though it was pointed out during the convention campaign that the viva voce system was even more susceptible to bribery and corruption.[13] Records of the vote for delegates are only available for Madison County, and even these are open to question. According to these, 517 votes were cast in the election out of 1,012 men of voting age in the county, a creditable percentage since many of these men probably did not meet the six-month residence requirements, and many eligible voters had a long way to travel to the only voting center in the county.[14]

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[10]Journal of the Illinois Constitutional Convention of 1818, pp. 49, 59. This journal was reprinted in the Journal of the Illinois State Historical Society, VI (October, 1913), 355-424, and also as a separate booklet with introduction and notes by Richard V. Carpenter. It will hereafter be referred to as the 1818 Journal, and material from it will be cited by page numbers in the original.

[11]Carpenter, intro., 1818 Journal, p. 4. One group was led by Ninian Edwards, Nathaniel Pope, Daniel Pope Cook, General Leonard White, and Judge Thomas Browne, and the other was led by Shadrach Bond, Jesse B. Thomas, Michael Jones, Elias Kent Kane, and others. The campaign for delegates does not seem to have been a contest between these two personality groups, although the second faction was more prominent in forming the constitution.

[12]Buck, p. 258.

[13]Intelligencer, July 1, 1818.

[14]Buck, p. 260.

The chosen delegates who assembled on August 6 in Kaskaskia included many of the most prominent men in the territory.[15] Complete information is unavailable concerning all of the delegates, but a glance at their knwon occupations shows a frontier versatility. Many of them listed two or three occupations; most of them numbered farming as one. Only five delegates had legal training; three of these were judges in the territory. The convention members included three physicians, a flat-boater, two sheriffs, a minister, a storekeeper, and a land office official. At least four delegates were connected with the salt industry, which was worked almost entirely with slave labor. The convention was the beginning or continuation of a political career for many; three members had been in the territorial legislature which petitioned for statehood, including the speaker, Dr. George Fisher, and at least twenty of the thirty-three delegates were elected to state office in the years after they helped write the constitution.[16]

The two most prominent members of the convention were undoubtedly Jesse B. Thomas and Elias Kent Kane. Thomas was born at Hagerstown, Maryland, and claimed direct descent from Lord Baltimore. An attorney, he settled first in Indiana Territory in 1803, and served as an Indiana delegate to Congress. When Illinois Territory was organized, he moved to Kaskaskia, and was appointed one of the first judges for the new territory. Thomas was president of the convention, and became one of the new U. S. Senators from Illinois, where he introduced the "Missouri Compromise" in 1820.[17] Elias Kent Kane had considerable influence in the drawing up of the 1818 Constitution. Born in New York and educated at Yale College, Kane moved to Kaskaskia in 1814 to practice law, and was appointed a territorial judge early in 1818. Under the new state government, Kane was appointed Governor Bond's first secretary of state. From 1824 until his death in 1835, he served as U. S. Senator.[18]

Included among the members of the convention was the first white child born in Illinois, Enoch Moore of Washington County, but most of the delegates had immigrated to the territory from other areas. Nine came from the southern states of Kentucky, Tennessee, and Virginia, and six came from the northeastern states, Massachusetts, Pennsylvania, and New York. One foreign-born delegate is listed, Samuel Omelveny from Ireland.[19]

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[15]Carpenter, intro., 1818 Journal, pp. 6-22. Five of the 33 delegates gave their names to counties in the new state. These were: Benjamin Stephenson, Elias Kent Kane, Conrad Will, General Leonard White, and William McHenry.

[16]Ibid.

[17]Dictionary of American Biography, XVIII, pp. 436-37.

[18]Carpenter, intro., 1818 Journal, pp. 11, 12.

[19]Ibid., pp. 6-22. The question of replacement of delegates came up when one convention member died soon after the convention began, August 10. A committee appointed two days later to consider the election of a representative to take his place reported "that an election could not be effected in time to answer the purpose of giving the said county their full representation in this convention before the same will have risen," and their report was concurred in by the convention. 1818 Journal, p. 42.

Convention Proceedings

During late July and early August of 1818, the elected delegates made their way to the old French town of Kaskaskia, located on a level, low stretch between the Kaskaskia and Mississippi rivers.[20] The convention was called to order on the first Monday in August, with all delegates present but four.[21]

On the second day, the convention examined the results of the census to ascertain officially whether it was authorized to proceed with the framing of a constitution. On June 17, 1818 a statement published by the Intelligencer of all the census reports except that of Franklin County showed a population of 34,620; obviously the territory was not going to attain the required 40,000 unless supplementary reports turned in during July showed a sharp increase. Miraculously, they did--the reports examined in the convention showed a population of 40,258, an increase of 5,638 over the first reports in June. The convention appears to have raised no question as to the accuracy of this census, although later investigators were dubious about its results.[22] After the census report was accepted, a committee of fifteen, one from each county, was appointed to frame a constitution.[23] The chairman of this committee was Leonard White of Gallatin, but from contemporary accounts the guiding spirit was Elias Kent Kane.[24]

The committee to draft the constitution reported on its work one week later, August 12. The constitution as approved August 26 provided the basic framework for the other constitutions which followed. Short and simple, outlining state government in only a rudimentary form, the 1818 Constitution was well suited to a frontier state with scarcely the 40,000 population necessary for its admittance into the Union. Its provisions, borrowed in large part from other frontier state constitutions, probably reflected the sentiments of a majority of Illinois settlers of the time, although many of these provisions, geared to immediate needs and personalities, led to difficulties in the future.

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[20]A likely site for the convention was the territorial legislative hall, the former French Commandant's house, which was the only substantial two-story building in the town. This house was owned by Dr. George Fisher and was rented to the First General Assembly after Illinois became a state. Illinois House Journal, 1st Gen. Assembly, 1st Sess., p. 38.

[21]1818 Journal, pp. 3-5.

[22]Suspicion of the accuracy of the census is raised by a comparison with the U. S. census of 1820. The 1818 count for Gallatin County totalled 101 more than the U. S. census two years later, in which time the permanent population of the county was likely to have increased. Washington County attracted even more permanent settlers during these two years, and yet its 1818 census report showed 190 more residents than the 1820 U. S. census. Buck, pp. 240, 264, 265.

[23]1818 Journal, pp. 7-8.

[24]Thomas Ford, History of Illinois, from its Commencement as a State in 1818 to 1847 (Chicago, 1854), p. 24. Ford was Governor of Illinois from 1843-1847.

The preamble to the constitution and Article I, dealing with the separation of power into three departments, strongly resemble the wording of the Indiana and Kentucky constitutions.[25]

The second article provided for a bicameral legislature, apportioned according to the number of white inhabitants. Representatives were to number not less than 27 or more than 36 until the population should reach 100,000, and senators were to total at least one-third and never more than one-half the number of representatives. Apportionment of each house was specified for the 1818 election in Section 8 of the schedule, but was to change according to the census to be taken every five years.[26]

Article II granted the suffrage to "all white male inhabitants" over twenty-one who had resided in the state six months, except for those convicted of "bribery, perjury, or any other infamous crime." By this provision, the vote was open to aliens, who had been allowed to vote and even to hold office in Illinois Territory. All votes were to be given viva voce, but this provision could be altered by the General Assembly.[27]

Representatives had to be twenty-one years old, citizens of the United States, and residents in the district they represented for twelve months before the election. Senators had to be twenty-five, with the same residence and citizenship requirements. Both were required to "have paid a state or county tax."[28] At first, Section 24 provided for annual sessions of the legislature, but at a second reading the annual provision was changed to biennial.[29]

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[25] 1818 Journal, p. 16.

[26] The 1818 Constitution can be found in a number of sources, including Verlie, pp. 25-47, the 1818 Journal, and the Illinois Blue Book, 1917-18, pp. 337-46. References here will be given by article and section, not page numbers.

[27] Art. II, sec. 27, 28, 30.

[28] Art. II, sec. 3, 6.

[29] Buck, p. 272. Biennial meetings were proposed in the August 19 Intelligencer in a "letter from an inhabitant of St. Clair county to a Member of the Convention." The writer contended that "the lapse of a few months will not furnish a sufficient test of the qualities of the theory or practicable operation of the laws passed at any one session," and criticized the annually-meeting territorial legislature for "enacting at one session and repealing at the next, until our laws on some subjects have become so confused, that to use a common adage, 'a Philadelphia lawyer' could not tell what these acts mean, nor even how much of them is in force." Saving expenses was another attractive reason pointed out for the change.

Article III on the executive was largely copied from Ohio's constitution and reflected popular distaste for the broad powers wielded by colonial and territorial governors. The convention members saw the General Assembly, which had been popularly elected when Illinois was a territory, as the real expression of the popular will and therefore the rightful repository of power in the three-part government. Thus, the executive's powers were greatly restricted. Unlike some of the other state governors who were allowed to serve only two years, the Illinois governor was granted a four-year term, but he was prohibited from succeeding himself. While no limit or specification was placed on the salaries of members of the General Assembly, the governor's salary was limited to $1000 until the year 1824, and that of his appointee, the secretary of state, to $600.[30]

No exclusive veto power was granted to the governor, reflecting Illinois' dislike of the absolute veto which the territorial governors had exercised. Instead, the New York system of a council of revision was adopted, probably through the influence of New York native Elias Kent Kane. The Council of Revision consisted of the governor and the judges of the Supreme Court "or a major part of them together with the governor." Its function would be to "revise all bills about to be passed into laws" and to return those of which it disapproved, together with its objections, to the house where they had originated. However, bills could be passed over the objections of the Council of Revision by a majority vote of the legislature.[31]

The governor was originally given an extensive appointing power; with the exception of a state treasurer and public printer to be elected biennially by the legislature, he was to appoint "all officers whose offices are established by this constitution, or shall be established by law, and whose appointments are not herein otherwise provided for."[32] However, Section 10 of the schedule, adopted after Article III, made this power ambiguous. The confusion, leading to great difficulties in the future, is blamed by Governor Thomas Ford in his History of Illinois on the desire of the convention members to assure one of the state offices to a particular person. Expecting Shadrach Bond to be elected governor, and believing that Bond would not appoint the convention's choice, Elijah C. Berry, to be the first auditor of public accounts, the convention declared in the schedule that "an auditor of public accounts, an attorney general and such other officers of the State as may be necessary, may be appointed by the General Assembly." (Italics added) This part of the schedule greatly encroached upon the appointing power given to the governor in the constitution proper, and was the source of controversy in the years ahead. What were "officers of the state?" The legislature decided that almost every office was, and appointed canal commissioners and agents, fund commissioners, commissioners of the board of public works, bank directors, states' attorneys, and others, sometimes by election and sometimes by passing laws appointing them to office by name. Ford described the difficulties:

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[30]Art. II, sec. 18.

[31]Art. III, sec. 19.

[32]Art. III, sec. 22.

> Sometimes one legislature, feeling pleased with the governor, would give him some appointing power, which their successors would take away, if they happened to quarrel with him. This constant changing and shifting of powers, from one co-ordinate branch of government to another, . . . was one of the worst features of the government. It led to innumerable intrigues and corruptions, and for a long time destroyed the harmony between the executive and legislative departments. And all this was caused by the Convention of 1818, in the attempt to get one man into an office of no very considerable importance.[33]

However, the convention members probably gave the confusing appointive power to the legislature not only to assure Mr. Berry his office, but also to increase the legislature's ascendancy over the executive.

A provision creating the office of lieutenant governor was added to Article III on the floor of the convention. This position recently had been included in the Indiana constitution. The lieutenant governor was originally required to possess the same qualifications as the governor, namely, thirty years of age, a thirty-year citizenship, and a two-year residence in the state. However, here another revision was made for a specific person. The convention wanted Colonel Pierre Menard, an old settler and a Frenchman, for that office, but he had not been naturalized until a year or so before the convention, so the thirty-year citizenship requirement was dropped in the schedule.[34]

Article IV of the constitution, concerning the judiciary, provided for a Supreme Court consisting of a chief justice and three associate justices; it was to have appellate jurisdiction only, except in certain special cases. The number of justices could be increased after 1824. These justices were to be appointed by joint ballot of the two houses of the legislature, and their term was to end in 1824, at which time they were to be commissioned indefinitely, "during good behavior."[35] The legislature was given power to establish inferior courts and to appoint justices of peace and determine their tenure, powers, and duties. However, the provision that "justices of the peace, when so appointed, shall be commissioned by the governor," again led to controversy in later years over the division of appointing power between the two branches of state government.

The article on slavery underwent the most changes from the committee's draft, and became a source of controversy in the constitution's approval by the United States Congress. The draft of the first section was copied from the Ohio constitution, stating that "there shall be neither slavery nor involuntary servitude in this state."[36]

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[33]Ford, p. 27.

[34]Ibid., p. 26. Schedule, sec. 14.

[35]Intelligencer, August 26, 1818.

[36]1818 Journal, p. 28.

However, on its second reading this section was changed to read that "neither slavery nor involuntary servitude shall hereafter be introduced into this state," and the phrasing concerning indentures, which under the Ohio constitution read "under pretence of indenture or otherwise" was changed to "under any indenture hereafter made."[37] (Italics added) In this way the current property rights in slaves and indentured servants in Illinois were upheld.

A second section was added to this article permitting persons "bound to labor in any other state," that is, slaves, to work in the salt works in Gallatin County, but not for a period longer than one year at a time. The intention of protecting present property rights and of permitting slaves to work in the salt mines, a task believed to be physically impossible for white men, was made even stronger when, at the third reading of the article, another section was inserted to further insure the continuation of a supply of unfree labor in Illinois:

> Each and every person who has been bound to service by contract or indenture by virtue of the laws of the Illinois territory . . . without fraud or collusion, shall be held to a specific performance of their contracts or indentures; and such negroes and mulattoes as have been registered in conformity with the aforesaid laws, shall serve out the time appointed by said laws.[38]

The children of slaves and indentured servants were to become free--males at the age of twenty-one and females at the age of eighteen. Illinois could conceivably be assured of some unfree labor until at least 1839.[39]

The compromise on the slavery article guaranteed that Illinois would be a free state and that existing property rights would be protected at the same time. The slavery clauses passed by narrow margins, but the division among the members was not sectional.[40] The Illinois constitution omitted a provision which had been included in the Ohio and Indiana constitutions expressly prohibiting future changes in the constitution to allow the introduction of slavery. The suspicion that this omission was intentional is borne out by the efforts of the pro-slavery group to call a constitutional convention in 1824.

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[37] Ibid., p. 48.

[38] Ibid., p. 59.

[39] The state of Illinois numbered 917 slaves in her 1820 population of 55,162, and 331 slaves in a total population of 476,183 in 1840. U. S., Bureau of the Census, A Compendium of the Ninth Census of the United States (1870), pp. 16-17.

[40] 1818 Journal, pp. 49, 59.

The article on the amending process was copied from the Ohio constitution. The constitution could only be amended by the calling of a convention. Two-thirds of the General Assembly might recommend to the voters "to vote for or against a convention." One provision which was to hamper constitutional change for years said that if a majority "of all the citizens of the state voting for representatives" voted in the affirmative, the next legislature was to call such a convention. This meant that a voter's failure to express himself on a convention call would count as a vote against the call.

The eighth and last article was the usual Bill of Rights, mostly taken from the Ohio, Kentucky, Tennessee, and Indiana constitutions.[41] Section 20 introduced the property tax in an effort to provide equal and fair taxation. Section 21 prohibited "any banks or monied institutions in this state, but those already provided for by law," and may have been an attempt to prevent a branch of the United States Bank from being established in Illinois. However, a state bank was permitted, and was the cause of many future troubles.

A committee of five worked out a schedule for putting the constitution in force. The schedule included such items as the apportionment of the two legislative houses for the first election of the General Assembly and the transfer of bonds and other financial contracts from territorial to state government; however, it also included some provisions which should have been included in the body of the constitution, such as the changes in qualifications for lieutenant governor and in the governor's appointive power discussed above.

An issue of controversy second only to that concerning slavery, was the location of the state capitol. Despite the efforts of speculators who wanted to sell their own land to the government, those who wanted the state itself to receive the profit from speculation by building the capitol on unsurveyed, unregistered lands won out.[42] The schedule directed the General Assembly to petition the federal government for land on the Kaskaskia River east of the third meridian. Their choice of a previously unsettled, inconvenient area met with disapproval from many quarters. The schedule provided that this proposed site, named Vandalia, should be the seat of government for twenty years. At the end of that time the capitol was moved to Springfield after another bitter fight.

The convention adjourned August 24, after having been in session only three weeks. Upon news of the completion of the writing of Illinois' constitution, the citizens of Kaskaskia held an informal celebration, as described in the Intelligencer:

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[41] Buck, p. 283.

[42] 1818 Journal, pp. 51, 71-72.

> . . . On this important occasion, the citizens of the town assembled to fire a federal salute to perpetuate the remembrance of the day when our constitution was signed and sealed. As many of the independent company of the town as were requisite to man the field piece, appeared at the capitol, in uniform, with their colours flying, (being the flag of the union as adopted by the last act of congress,) accompanied by the principal field officers. Upon the signing of the constitution, and the convention being about to adjourn they were invited by the committee of arrangements to join in the feu de joie.
>
> The field piece was placed in front of the capitol, the military officers a few paces in its rear--the governor, secretary, delegate to congress, and most of the territorial officers, accompanying the members of the convention, took their positions a few paces in the rear: The salute was commenced--20 rounds were fired, and one for the new state of Illinois, which was accompanied by the following pledge, from the independent corps:
>
> "Under these colours, we pledge ourselves to support the constitution of Illinois."
>
> This was truly a proud day for the citizens of Illinois--a day on which hung the prosperity and hopes of thousands yet to follow--a day which will long be remembered and spoken of with enthusiastic pride; as a day connected with the permanent prosperity of our literary, political and religious institutions--as the main pillar in the edifice of our state independence, and justly the basis of our future greatness.[43]

This festive occasion was the only evidence of public feeling towards the new constitution. It was not the custom of the time to submit state constitutions to a popular vote, and no suggestion of such a procedure seems to have been made in Illinois.[44]

Approval of the Constitution of 1818

The Illinois constitution did require approval by Congress and the President, however. The debate in the House previewed the more publicized debate three months later over the admission of Missouri. Representative Tallmadge of New York, who was to lead the fight against admission of Missouri as a slave state, demanded further evidence that Illinois had the requisite population, and held that "the principle of slavery, if not adopted in the constitution, was at least not sufficiently

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[43] Intelligencer, September 2, 1818.

[44] Buck, p. 292.

prohibited." He recalled that the Ordinance of 1787 prohibited slavery in the entire Northwest Territory, while the sixth article of Illinois' constitution "contravened this stipulation, either in the letter or the spirit." Tallmadge pointed approvingly to the strong prohibition of slavery found in the constitution of neighboring Indiana; he believed that Congress should insist that "slavery should be absolutely prohibited in all states erected within the Northwest Territory."[45]

Representatives Poindexter of Mississippi and Anderson of Kentucky answered Tallmadge by proclaiming the impracticability of regulating a state's constitution, for if after admission, a constitution was to be changed to admit slavery, there was nothing Congress could do about it. Anderson doubted whether Congress "had a right to proscribe any condition respecting slavery" in the territories--the doctrine of Calhoun twenty years later. Tallmadge disagreed, insisting that Congress did have the power to prevent slavery in the territories, and protesting that a state could not change its constitution at will, on which point he was disputed by Congressman (and future President) William Henry Harrison of Ohio. Harrison, although he sincerely wished Illinois had emancipated its slaves or prohibited any future slavery like Indiana, admitted that he had always considered the Northwest Ordinance a "dead letter."[46]

This ended the floor debate, and the resolution to admit Illinois carried by a vote of 117 to 34. The vote divided on sectional lines. Of the 34 voting against the resolution, 33 were from the North.[47]

The Senate passed the resolution without debate,[48] and when President Monroe signed it December 3, Illinois' new constitution went into effect.

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[45] Annals of Congress, 15th Cong., 2nd Sess., pp. 305-11.

[46] Ibid., p. 311.

[47] U. S., Congress, House Journal, 15th Cong., 2nd Sess., p. 30.

[48] U. S., Congress, Senate Journal, 15th Cong., 2nd Sess., p. 43.

II

THE STRUGGLE FOR A SLAVERY CONVENTION, 1822-1824

Only five years after the 1818 Constitution went into effect, attempts were made to change it. Many had suspected that the exclusion from the constitution of a prohibition of future slavery indicated the hopes of pro-slavery men in Illinois. These suspicions were fulfilled in 1823, as attempts were made to call a convention for the purpose of changing the constitution to permit slavery in the state.

Pro-slavery sentiment in Illinois had increased with the financial crisis occurring after 1820; many felt slavery would attract prosperous planters who would spend money freely, buy up the land of disillusioned settlers who wanted to leave, and pay taxes. The example of Missouri, now admitted as a slave state and attracting wealthy slaveholding settlers, served as a strong influence, particularly in the southern counties of Illinois.

The slavery question had already been a determining issue in the 1822 election for governor. At that time, Edward Coles, an anti-slavery man, had narrowly defeated Joseph B. Phillips, whose supporters frankly invited pro-slavery assistance; the victory for Coles came only because the opposition was split between Phillips and another candidate. After his election, Coles immediately pushed the slavery issue, calling for the abolition of such slavery as had been permitted to continue under the 1818 Constitution, repeal of the black code,[1] and passage of laws against the kidnapping of free blacks. This provided a golden opportunity for the pro-slavery elements of the General Assembly; the Senate replied to Cole that the legislature presently had no power to abolish existing slavery, but that the whole question could be considered in a new constitution. By a vote of twelve to six, the Senate approved a call for a constitutional convention, with the intent of legalizing rather than abolishing slavery in Illinois.

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[1]The first legislature of the state of Illinois had passed severe laws restricting the movement, immigration, and labor of free Negroes, their rights to serve as witnesses in court, with stiff penalties against the harboring of fugitive slaves, as well as fines and punishments by whipping of disobedient slaves and servants. These laws, taken wholesale from constitutions of some of the southern states, were not enforced in Illinois, but were not taken off the statute books until 1865.

The bill calling for a new convention met stiffer opposition in the House, where the members were deeply divided on the question. On February 11, a vote on the issue carried twenty-three to thirteen, but not by the necessary two-thirds majority; one more vote was needed, and there was a way to get it. The election for one of the seats was contested, and the House had originally voted to seat Nicholas Hansen over his opponent, John Shaw. Now, two months later, the House overturned its original decision, unseated Hansen, and replaced him with Shaw. With Shaw's vote, the bill to call a convention passed twenty-four to twelve.[2]

The convention call had to be approved by the voters, and after a heated campaign they lined up sectionally, with southern counties for the call and northern counties against it. During the campaign, according to Governor Ford, the pro-convention or pro-slavery forces used a variety of tactics to demonstrate that public opinion was overwhelmingly behind them. The night after the passage of the resolution calling for a convention referendum, the convention party formed a procession. Led by three Supreme Court justices and the lieutenant governor, a majority of the legislature plus a number of townspeople marched on the residences of Governor Coles and other political opponents.[3] The anti-convention forces quickly began to organize their opposition. The St. Clair County Society for the Prevention of Slavery in the State of Illinois was founded March 22, 1823; similar societies were founded in Monroe, Edwards,and Morgan counties in the next four months. Anti-slavery caucuses were held to pick candidates for offices in the same election. Such church groups as the Friends of Humanity, the Christian Church Conference on the Wabash, and many Methodist circuit riders and preachers assailed slavery and slaveholders. Governor Coles' friendship with Nicholas Biddle obtained for him connections with Philadelphia Quakers who supplied him with anti-slavery tracts which were distributed by the thousands, although their origin was not identified.[4]

The pro-convention organizers had behind them several newspapers--Henry Eddy's Illinois Gazette, the Kaskaskia Republican Advocate, and the Illinois Republican of Edwardsville. Many of the most influential politicians in Illinois supported a convention. The convention backers did not name slavery as their reason for calling a convention, but letters and editorials show the drift of their arguments. Some claimed that slavery would be ended more quickly by its diffusion over as large an area as possible, and that the slaves themselves would benefit by exposure to humane Illinois treatment. Others pointed to the material advantage to the state of the settlement of wealthy planters, and the necessity of slavery for the continued prosperity of the Gallatin salt mines.

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[2]Theodore Pease, The Frontier State, Vol. II: The Centennial History of Illinois (Springfield: Illinois Centennial Commission, 1918), pp. 78-80.

[3]Ford, p. 53.

[4]Elihu B. Washburne, Sketch of Edward Coles, Second Governor of Illinois and of the Slavery Struggle of 1823-1824 (Chicago, 1882), pp. 154-64.

The anti-slavery forces replied to some of these charges, pointing out that diffusion of slavery had so far led to its expansion, not its demise. Slavery was proclaimed as a moral issue, as in this passage from a letter to the Intelligencer:

> Is it not quite as unjust, because some men are black, to say there is a natural distinction as to them; and that black men, because they are black, ought to be slave. . . is it not the hight [sic] of arrogance to allege that because we have strong feelings and cultivated minds it would be great cruelty to make slaves of us; but that because they are yet ignorant and uncultivated, it is no injury at all to them? Such a principle once admitted lays the foundation of a tyranny and injuce [sic] that have no end.[5]

The moral issue was upheld by Governor Coles, Congressman Daniel Pope Cook, Hooper Warren, editor of the Edwardsville Spectator, and David Blackwell, who was installed as editor of the Illinois Intelligencer after its purchase by Coles and a group of anti-conventionists. Powerful and important support also came from Morris Birkbeck, the English radical, who, with George Flower, had established an English colony of settlers in Edwards County. Birkbeck had settled in Illinois partly because of the availability and cheapness of land , and partly because of its exclusion of slavery, which he detested. Now, in an intense effort to prevent the establishment of slavery in Illinois, Birkbeck wrote letters to newspapers, signed "Jonathan Freeman." He spoke in simple language to the small independent farmer, pointing out to him how he would be supplanted and degraded, not enriched, by opening Illinois to the slaveholding planter class.[6]

The contest over calling a convention lasted from the spring of 1823 until the general election on August 2, 1824, and Ford calls it a "long, excited, angry, bitter, and indignant contest."[7] The results of the election were definitive. Votes tallied 4,972 for a convention and 6,640 against it.

The vote showed a distinct sectional alignment, with southern counties supporting the convention and northern counties opposing it. There were only two southern Illinois counties, Johnson and Union, which did not give large majorities for calling a convention, while only one of the northernmost counties, Fayette, did not return a large majority against it. Pike, Fulton, Morgan, Sangamon, and Edgar all returned anti-

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[5] Intelligencer, May 21, 1824.

[6] Pease, The Frontier State, pp. 87-89.

[7] Ford, p. 54.

convention majorities of better than 80 per cent.[8]

The referendum submitted to the voters in 1824 differs from the three other unsuccessful referenda calling for Illinois constitutional conventions. A majority in 1824 voted against the calling of a convention; other referenda failed because not enough of those voting at the elections cast either positive or negative votes on the convention question. The 1824 referendum was defeated on a specific issue on which the voters made themselves heard; the greatest cause of the failure of the other three was voter apathy. In 1824 the question of the admission of slavery into Illinois was settled, although the question of the place of the black man in the state was to come up more than once again in Illinois constitution making.

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[8]Southern county voter percentages were as follows: in Gallatin, the percentage was 82 per cent for a convention; in Pope, 69 per cent, Alexander, 60 per cent, Jackson, 66 per cent, Hamilton, 67 per cent, Jefferson, 70 per cent, Wayne, 63 per cent. Union, Johnson, and White were close either way. North central counties were against a convention by fair majorities, and northern counties were overwhelmingly against it. In Pike County, the vote was 90 per cent against a convention; in Fulton, 92 per cent, Morgan, 91 per cent, Sangamon, 83 per cent, Clark, 79 per cent, and Edgar, 99 per cent. Theodore Pease, ed., Illinois Election Returns, 1818-1848, Illinois State Historical Library, Collections, XVIII (Springfield, 1923), pp. 27-29.

III

ILLINOIS' SECOND CONSTITUTIONAL CONVENTION

Developments in the State, 1824-1842

The next attempt to call a constitutional convention in Illinois also failed, but under completely different circumstances. The opportunity to express themselves concerning the amending or rewriting of the 1818 Constitution was not offered to the voters again until 1842, and by that time the earlier constitution was in many ways outdated. Illinois, hard put to find 40,000 settlers to qualify for statehood in 1818, had a total population of 476,183 by 1840, an increase of over tenfold.[1]

The increasing population was changing the settlement pattern in Illinois. In the eighteen-twenties and thirties Illinois settlers began to forsake the less productive agricultural lands between the Wabash and the Mississippi in the southern part of the state for the rich Sangamon River country. From the South and by way of the Erie Canal and the Great Lakes, new tides of population poured into the country north and west of the Illinois and Kankakee rivers. The early thirties saw the disappearance of the Indians from the prairies, with the Black Hawk War of 1832 marking their final retreat across the Mississippi. Farms were carved out of the wilderness as tract after tract of government land was put up for sale at land offices at Galena, Chicago, Quincy, and Danville. Speculators thrived on the sale of lots in proposed towns, especially in Chicago, which grew rapidly year by year.[2] In 1832, Chicago was a tiny market town with two stores and 150 inhabitants; four years later it had 120 stores and a population of 8,000. By 1842 Chicago was the market for "about one-half the State of Illinois, a large portion of Indiana, and a very considerable part of Wisconsin,"[3] In 1850 its population was almost 30,000.[4]

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[1]U. S., Bureau of the Census, A Compendium of the Ninth Census (1870), pp. 8-9.

[2]Pease, The Story of Illinois, pp. 117, 122.

[3]Judson Fiske Lee, "Transportation in the Development of Northern Illinois Previous to 1860," Journal of the Illinois State Historical Society, X, (1917-18), p. 24.

[4]U. S., Bureau of the Census, Fifteenth Census of the United States (1930) I, 280.

While most of Illinois' population influx came from other parts of the United States, foreign immigration began to play an important part in the thirties when a large group of Germans settled in the Belleville area. Many Irish became farmers when their work on the Illinois-Michigan Canal was paid for in canal land, and English, Scotch, and Scandinavian settlers began to arrive.[5]

As Illinois grew more complex economically and socially, its political complexion also changed. The Jacksonian Era, in Illinois as elsewhere in the West, gave rise to formal political parties, although state politics still depended to a large extent on personal factions and followings.[6] Broadly speaking, the Jacksonian Democrats, who became a well-organized, smoothly-operating party in the late thirties, opposed all banks, whether state or federal. Illinois Democrats became identified with the interests of the farmers, who at this time made up the great majority of the state's population, and thus were more successful at the polls than the Whigs, who sought the allegiance of the business community by supporting internal improvements at federal expense, the United States Bank, and a protective tariff. The Whigs were solicitous of property rights and believed that the legislature should be supreme over the executive. As the minority in Illinois, the Whigs were never able to elect a governor or U. S. Senator, nor to carry Illinois' electoral votes for their presidential candidates.[7]

Jacksonian democracy also instigated a demand for greater direct control of government by the people through popular election of officers. Appointment of state officers by the legislature and the governor, as established in the 1818 Constitution, was resented. Also, Jackson's example led to a realignment of the theory of popular control. When the 1818 Constitution was written, the agrarians looked to the legislature as a bulwark against executive tyranny. Now, they saw a strong executive as necessary to protect the interests of the "common man," while business interests, favoring the Whig party, turned to the legislature for their protection.

Despite the dominance of the Democratic party in Illinois, the state engaged in several Whig-favored enterprises which ended in disaster, thus exposing some of the other weaknesses of the 1818 Constitution. The constitution had permitted the establishment of state banks "regulated by the legislature," but banks created and administered by the legislature in 1821 and 1834 had both failed, with resulting

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[5]In 1850 there were 38,000 first-generation Germans in Illinois, 28,000 Irish, 18,600 English, 4,600 Scots, and 3,500 Scandinavians. William V. Pooley, Settlement in Illinois, 1830-1850 (Madison, 1908), pp. 495-502.

[6]Pease, The Frontier State, pp. 136, 278.

[7]Pease, The Story of Illinois, pp. 107-16.

financial hardship and loss of credit for the state. During the same period, the legislature also undertook an internal improvements scheme, but only one of its projects, the Illinois-Michigan Canal, was successful. A plan to build a great system of railroads, for which the legislature appropriated $10 million in 1837, was abandoned in 1841 after only fifty miles of road had been completed.[8] After the collapse of the banks and the demise of the internal improvement system, Illinois was heavily in debt, with its financial credit seriously impaired. It seemed almost impossible to pay this debt, and there was some talk of repudiation until Thomas Ford became governor in 1842 and made strenuous efforts to make Illinois assume its responsibilities and save its credit.[9] Therefore, one of the reasons for calling a constitutional convention was to try to change the constitution in order to prevent future financial disasters.

Attempts to Call a Convention, 1842, 1846

By 1842 the failures of the 1818 Constitution had become apparent. The excessive power of the legislature, the weakness of the executive, squabbles between the two branches over appointments, an inadequate judiciary, life appointments for some officials, and the question of alien suffrage were some of the main faults which called for revision. In 1841, the Belleville Advocate listed seventeen reasons why a constitutional convention should be called, and urged voters to approve a call in the 1842 election.[10]

When the general election was held on August 1, those voting on the question of a convention call did approve it, but a majority of those voting for representatives to the next General Assembly was required, and the number fell approximately 9,203 votes short.[11] Historian Arthur Charles Cole blames this failure on indifference on the part of the electorate, brought on by the hesitation of political spokesmen of the day to place specific reasons and needs for a convention before the voters.[12]

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[8] Pease, The Frontier State, pp. 57-69, 194-235.

[9] Ibid., pp. 316-26.

[10] Belleville Advocate, October 21, December 2, 9, 1841.

[11] The total vote cast for representatives, as computed from county returns on the election, was 83,359. The official election returns listed 37,476 votes for a convention, with 23,282 votes against a convention. Official election returns listed only 67,396 votes for representatives, but these figures are somewhat indefinite; some county clerks neglected to return the number of votes cast for representatives. Others did not return votes cast against a convention, or else arrived at their figure by subtracting votes for a convention from those cast for representatives. Pease, Election Returns, pp. 132-34.

[12] Arthur C. Cole, ed., The Constitutional Debates of 1847, Illinois State Historical Library, Collections, XIV, (Springfield, 1919), p. xv. The 1847 convention did not allot money for printing the convention debates. Cole's record is taken from contemporary accounts of convention proceedings in the Illinois State Register and the Sangamon Journal.

After this call failed, increased efforts by newspaper editors, Whigs and Democrats alike condemned the old constitution and urged its drastic modification.[13] By the time the question was resubmitted to the voters at the August 3, 1846 general election, the public had been informed as to the serious necessity for changes in their constitution. The question was now approved by the required majority of those voting for representatives, with 58,715 voting for a convention and 19,244 voting against it.[14]

Election of Delegates, 1847

Now that a constitutional convention had been approved by the voters, the Fifteenth General Assembly designated April 3, 1847, as the date for electing delegates to the convention.[15] The delegates were to assemble on June 7 at Springfield, the state capitol since 1839, and were to receive the same per diem pay as members of the General Assembly, which was then $4 per day.[16] The 1818 Constitution specified that the number of delegates was to equal the number of members of the General Assembly, a workable number of 42 when the First General Assembly was apportioned.[17] However, by 1847, the General Assembly totalled 162 members; therefore, 162 convention members were elected, the largest number of delegates to attend any of Illinois' constitutional conventions, and too unwieldy a body for effective work.

Both Democrat and Whig party members had campaigned for the calling of a convention, and both threw themselves into the campaign for the election of delegates. The Democrats promised to work for an anti-bank provision, popular election of state officials, including Supreme Court judges, an effective veto power for the governor, and "the infusion of pure democratic principles into the fundamental law." The Whigs capitalized on the popular demand for "economy and reform;" they hoped to exclude foreigners from voting and to keep banking from being excluded. The Democrats, the majority party, emphasized party regularity in choosing delegates; the Whigs, as befitting the minority,

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[13] Pease, The Frontier State, p. 407.

[14] Again considering the difficulties mentioned in footnote 11 above in compiling an accurate vote, Pease calculates that 106,169-1/2 votes were cast for representatives while 58,716 votes were cast for a convention, so that the question passed by a constitutional majority of 5,631 votes. While the 1842 convention call failed to receive a constitutional majority of approval in 56 of the 99 Illinois counties, in 1846, 59 counties approved the call by a majority of those voting for General Assembly representatives; in only 14 counties in 1846 did those voting against outnumber those voting for a convention. Pease, Election Returns, pp. 168-70.

[15] Laws of Illinois (1847), p. 33.

[16] Cole., ed., Constitutional Debates of 1847, pp. 196-99.

[17] Illinois, Constitution (1818), Schedule, sec. 8.

claimed that the convention delegates should be chosen above party considerations.[18] The Whig strategy was successful in large part, as 71 Whigs were elected to 91 Democrats, still a minority but a large enough minority to prevent the making of a strictly partisan constitution.[19]

The makeup of the convention delegation showed both the movement of population into Illinois and the agrarian character of the state at that time. Only seven delegates were natives of Illinois; 26 were from New England, 38 from the Middle States, 35 from the South Atlantic Seaboard, 41 from Kentucky and Tennessee, and 10 from Ohio and Indiana. As evidence of foreign immigration, three convention members were natives of Scotland, one was from Ireland, and two were born in Germany.[20] Farmers outnumbered lawyers 76 to 54.[21]

As in the case of the delegates to the 1818 constitutional convention, many of these delegates marked the beginning or continuance of their political careers with membership in the convention. Seven of the delegates were in later years elected to the U. S. Congress, eight became members of the state legislature, and seven became circuit court judges.[22] Five convention members were senators and six were representatives in the current General Assembly, including Newton Cloud, president of the convention and speaker of the House of Representatives from 1846 to 1848. John M. Palmer, a Democrat in 1847, helped found the Republican party in 1856, and served as Illinois' governor from 1869 to 1873, during the writing of another constitution. David Davis, eminent lawyer and friend of Abraham Lincoln, was appointed a federal judge soon after his convention service, and served as a U. S. Supreme Court justice from 1862 to 1877, when he resigned to become U. S. Senator from Illinois. Several delegates also served in later constitutional conventions--three in 1862, three in 1869-70, and one, John Dement, in all three conventions in 1848, 1862, and 1869-70.[23]

1847 Convention Proceedings

The convention assembled in the House of Representatives in Springfield on June 7, 1847, and the election of a permanent president gave an early indication of the future course of the convention. The majority Democratic party was disorganized and unable to agree on a candidate, until the temporary chairman was finally nominated as an anti-bank man. Morgan County had elected a bipartisan delegation, two

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[18]Cole, ed., Constitutional Debates of 1847, pp. xvi, 480.

[19]Pease, Election Returns, pp. 437-63.

[20]Cole, pp. 949-83.

[21]Ibid. The affinity of the farmer with the Democratic party is shown by a comparison of occupation with party affiliation. Forty-nine of the farmer-delegates were Democrats, while 28 were Whigs; 25 lawyers were Democrats, while 27 were Whigs. Farmers made up 54 per cent of the Democratic delegation and 39 per cent of the Whig delegation, while lawyers constituted 27 per cent of the Democratic and 38 per cent of the Whig delegations.

[22]John Moses, Illinois, Historical and Statistical, Vol. II (Chicago, 1889), p. 554.

[23]Cole, pp. 949-83.

Democrats and two Whigs, and this group was able to hold the balance of power between the minority Whigs and the split Democrats. A Morgan County Democrat, Newton Cloud, was elected with the help of Whigs and some conservative Democrats who advocated a regulated banking system. On the first ballot, Cloud received 84 votes and Casey, 65.[24] Thus the Whigs and "bank Democrats" combined for the first time in the convention, but not the last.

Henry W. Moore, a Gallatin County lawyer, was engaged to act as secretary and John A. Wilson as sergeant-at-arms of the convention; both were Democrats. Then, Sangamon County delegates, both Whigs, opposed the election of assistant secretaries and of an assistant to the sergeant-at-arms, and proposed to ignore the legislative arrangement for the election of a printer with a fixed compensation and to let the work out to the lowest bidder. These proposals would fulfill the Whig pledge of "economy, retrenchment, and reform." The Democrats objected and claimed that matters pertaining to the number and pay of officers had been established in the legislative act which had ordered the convention; as the majority party, of course, they expected to fill the additional positions with party men. After four days of debate, the Democrats won out, and the additional officers were elected.[25]

The four days' discussion, although initiated by partisan squabbling, did develop into a worthwhile consideration of the relative powers of the legislative authority of the state and of the convention. To what extent was the convention bound by the legislature's enabling act? This question, debated in 1847, was to come up again in conventions in 1862 and 1869, and was to be a factor in the defeat of the 1862 proposed constitution.

After the 1847 convention assigned committees to establish the convention's rules and then to work on various sections of the constitution,[26] the next weeks were taken up with meetings of these committees, plus the submission to the committees of various resolutions, many of which were debated on the floor. On three separate occasions, the convention was delayed by resolutions of sympathy for those killed in the Mexican War, or controversy over war protests. But despite factionalism and interruptions, the convention finished its work in less than three months, adjourning August 31.[27]

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[24]Cyrus Edwards, a Whig from Madison and Archibald Williams, a Whig from Adams received two votes each. Cole, Constitutional Debates of 1847, p. 4.

[25]Ibid., p. 47.

[26]Committees were appointed on the Executive Department, the Judiciary, Legislative, Bill of Rights, Incorporations, Revenue, Elections and the Right of Suffrage, Finance, Education, Departments, Counties, the Militia, Revision and Amendment, Misc. Subjects and Law Reform. Ibid., pp. 65-66.

[27]Ibid., p. 945.

The Constitution Written in 1847

A glance at the finished product of the 1847 convention shows several outstanding characteristics. First, the constitution was considerably longer and more detailed than that of 1818, both because of the increased complexity of the state's economy and government and because the convention writers were attempting to exercise greater control over the state government in the future than had been the case in the past. Second, the constitution was not a party document; the Democrats were unable to achieve all their goals, as a coalition of Whigs and conservative Democrats forced them to compromise on several key issues. This, while leaving many of those who believed in Democratic principles dissatisfied, helped insure the support of both parties for the passage of the constitution. Third, a major effort of the writers of the 1848 Constitution was to correct, if possible, all mistakes made in 1818. This was a praiseworthy goal, but in "looking backward" so often the constitution in many areas did not look forward at all, and many of its provisions quickly became obsolete.

The intent to correct old mistakes was evident in the preamble. When the 1818 Constitution was written, a sect of Covenanters who had settled in Randolph County presented petitions to the convention, asking that "this convention may declare the scriptures to be the word of God, and that the constitution is founded upon the same."[28] The petitions were ignored, and according to Governor Ford, the Covenanters for many years "refused to work the roads under the laws, serve on juries, hold any office, or do any other act showing that they recognized the government."[29] Remembering this, Judge Lockwood of Morgan County created an addition to the preamble, introduced by his colleague, William Thomas, which stated in parentheses after "We, the people of the State of Illinois" that they were "grateful to Almighty God, for the civil, political and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations."[30] Thus the 1847 constitution writers sought to keep from offending any religious group and wrote a provision in response to a specific problem from the past which was unlikely to reoccur.

Article III, on the legislature, received some drastic changes from the Constitution of 1818. Jacksonian Democrats held that the executive represented the best interest of the people, and that the

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[28] 1818 Journal, p. 13.

[29] Ford, p. 25.

[30] This addition to the preamble remained in constitutions written by the 1862, 1869-70, and 1920-22 conventions.

legislature should therefore be curbed. Another reason for curtailing the legislature's power was found in the excesses committed by the General Assembly in the period between 1818 and 1848, in almost bankrupting the state through the creation of banks and the internal improvement system. Therefore, Article III greatly limited the legislature's power, beginning with eligibility requirements; both the ages and residence requirements for representatives and senators were increased. The size of the General Assembly was decreased from 162 to 100 members, 75 representatives and 25 senators, specifically apportioned in Section 40. The number of representatives could be increased to as many as 100 as the population grew, and a new apportionment "according to the number of white inhabitants" was to be made every ten years, after the results of the federal census were known.[31]

As part of the convention's "economy drive" and moves to curtail the legislature, the salaries of senators and representatives were fixed in the constitution at $2 per day for the first 42 days' attendance, and $1 per day thereafter. These ridiculously low salaries, rigidly fixed in the constitution, had disastrous effects; Assembly members used subterfuges of various kinds to get around the restrictions, or supplemented their pay by introducing hundreds of private bills, which became a major problem in the following decades. Private and unnecessary legislation was supposed to be discouraged by the measure reducing salaries after 42 days, and by Section 23, which stipulated that every bill had to be read on three different days in each house; however, assemblies took advantage of the clause which allowed three-fourths of the House to dispense with the latter rule "in case of urgency." Most bills were designated as "urgent."

The convention members made another attempt to prevent mistakes of the past with a keen awareness of the internal improvement debts, which still had to be paid. In Section 37, the state was prohibited from contracting debts of over $50,000, and debts under this amount could be contracted only "to meet casual deficits or failures in revenues . . . and the moneys thus borrowed shall be applied to the purpose for which they were obtained, or to repay the debt thus made, and to no other purpose." Debts except for the purpose of "repelling invasion, suppressing insurrection, or defending the state in war" had to be approved by the electorate at a general election. This provision greatly limited government flexibility; it was designed with the past rather than future in mind.

The state debt which already had been contracted, however, was not repudiated by the convention. A special provision, to be voted on separately, provided for the assessment of a two mill tax to be devoted exclusively to relieving this debt.[32]

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[31]Illinois, Constitution (1848), Art. III, sec. 8. The 1848 Constitution is found in various sources, including the Journal of the 1847 Convention and Verlie, pp. 51-99. References here will be given by article and section only.

[32]Art. XV.

As the powers of the legislature were curtailed, those of the executive were increased--though not as greatly as the Democrats would have liked. The Council of Revision was abolished; it had served an advisory purpose from 1818 to 1848 by calling legislators' attention to technical defects in laws passed, but Supreme Court rulings on the constitutionality of state laws were continually embarrassed by the fact that the justices had already passed on the laws in their role as members of the Council of Revision.[33] Also, the Council's vetoes were seldom effective, as they could be overturned by a simple majority of the legislature. The Democrats, therefore, promised to give the governor an exclusive veto power which could only be overturned by two-thirds of the General Assembly. The governor obtained the veto in the new constitution, but the Whigs were able, with the help of some conservative Democrats, to provide that his veto could be overruled by a simple majority of the members elected in each house.[34] The governor's salary, like that of the legislators and the Supreme Court justices, was fixed in the constitution--however, a measure of his increased power is shown by the fact that his salary was raised from $1000 to $1500 per year, while that of the justices was raised to only $1200 per annum.[35] The secretary of state, auditor, and state treasurer were each to receive $800 per year. All of these salaries were unrealistic and inadequate during the next decades of upheaval and financial growth.

The ambiguities of the 1818 Constitution, with its legislative appointment power inserted at the last minute, had led to confusion and conflict between the legislature and executive. In the light of unhappy experience and the principles of Jacksonian democracy, the appointive power was taken away from both the legislature and the governor; all state and county officials were to be elected by the people. The new constitution also fixed terms of office for executive officers--four years for the secretary of state and the auditor, and a two-year term for the treasurer.[36]

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[33]Pease, The Frontier State, p. 34.

[34]Art. IV, sec. 21.

[35]Art. IV, sec. 5; Art. V, sec. 10.

[36]A conflict over terms of office for the secretary of state had occurred in 1838. A. P. Field had been appointed secretary of state by Governor Edwards in 1826; he was still in office in 1838, when Democratic Governor Carlin attempted to remove him. Field, a Whig, stated that the constitution failed to specify the term for which the secretary of state was to be chosen, and he was upheld by the state Supreme Court, which ruled that while the term of office was not for life, the tenure, until the state should alter it, was dependent only on good behavior. Pease, The Frontier State, p. 278.

Supreme Court justices were also made elective in Article V of the 1848 Constitution, after an unfortunate experience with legislative control of the courts. The 1818 Constitution had given the General Assembly the power to increase the number of Supreme Court judges after 1824. The Assembly could appoint judges, but could not remove them except through impeachment proceedings. Acting under this power, the legislature had drastically changed the composition of the court in 1841, when three of the four justices were Whigs, appointed before the Democrats came to power. Angered by an unfavorable Supreme Court decision, Democrats in the General Assembly passed a bill increasing the number of Supreme Court judges from four to nine. The bill was vetoed by the Council of Revision, but passed over the veto. Five new judges, all Democrats, were appointed.[37]

To prevent the recurrence of such a situation under the new constitution, the number of popularly-elected judges was permanently fixed at three; this number could not be changed by the legislature. The justices were to serve nine-year terms.[38] The Democrats, with their numerical superiority in the state, wanted to elect all three judges by the general ticket system, but again compromised with the Whigs, dividing the state into three sections, with one judge to be elected from each section. A consolation for the Democrats provided that after the first election the General Assembly might change this arrangement to "provide by law for their election by the whole state" if they wished.[39]

The 1848 Constitution added unnecessary detail to Article V on courts. The 1818 Constitution had merely given the General Assembly the power to create inferior courts, which the Assembly had done through statute. The 1848 Constitution incorporated the entire present lower court system into its provisions, since it had to that time worked satisfactorily, thereby restricting future legislatures from expanding and revising the court system to meet new needs.

Suffrage, as treated in Article VI, provoked a great deal of discussion, as it has in all Illinois' constitutional conventions. The Democrats, beneficiaries of most of the immigrant vote, wanted to retain the 1818 clause which gave the franchise to "all white male inhabitants above the age of 21 years;" the Whigs wanted to restrict this privilege to "all white male citizens." The Democrats accused the Whigs of "nativism," and defended the right of foreign residents to have a voice in elections; Whig spokesmen defended "true Americanism," and were able to gather enough Democratic defectors to place a citizenship qualification for voting in the new constitution by a vote of 81 to 60.[40]

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[37]Among these newly-appointed Democratic judges were Thomas Ford, Stephen A. Douglas, and convention member Walter P. Scates. Pease, The Frontier State, p. 280.

[38]Art. V, sec. 4.

[39]Art. V, sec. 3.

[40]1847 Journal, pp. 206-7

Another amendment to the suffrage provision had little chance, however. On June 22, Daniel Whitney, a Boone County doctor, made a motion to strike out the word "white" whenever it occurred in the resolutions regarding suffrage, but his motion favoring Negro suffrage lost, 137 to 7.[41]

All elections were now to be held by ballot only, ending a long dispute between advocates of the ballot and viva voce systems. The viva voce provision of the 1818 Constitution had been changed to ballot in 1819, to viva voce in 1821, to ballot in 1823, and viva voce in 1829. The viva voce advocates felt that ballot voting implied some kind of clique or organization; ballot advocators protested that viva voce was easily controlled to intimidate voters. The viva voce system lost out as party organizations formed and polling places multiplied, so that candidates could not appear at each location to ask for support.[42] A useful provision of Article VI established one bienniel date, the Tuesday after the first Monday of November, for all general elections; until then as many as four general elections had been held per year.[43]

The revenue article repeated the 1818 provision for a property tax, but also included a section proposed by Whigs for a poll tax of "not less than fifty cents nor more than one dollar each," to be levied on "all able-bodied, free, white male inhabitants of this state," ages twenty-one to sixty, who were eligible to vote. The reasons for the poll tax, as stated by Whig delegate James Davis, were to enable every class, and not just the property owner, to bear a share of the public burdens. Democrats replied that the poor already did their share in supporting the state through serving in the state militia and on jury duty, and in the road labor required of every man, which was valued at from two to five dollars per year. Nevertheless, the provision for a poll tax carried, with Democratic support from southern Illinois.[44] The tax was not specifically instituted in the constitution, however; the legislature was only given permission to levy it if necessary.[45]

Article X attempted to prohibit the establishment of corporations by the legislature, but allowed them "in cases where, in the judgment of the General Assembly, the objects of the corporation cannot be attained under general laws."[46] In the next decades, the General Assembly decided time and time again that this clause applied, and passed bills allowing private corporations to be formed.

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[41]The seven voting for the amendment were Whigs from far northern Illinois counties, all natives of New York and New England. 1847 Journal, p. 76.

[42]Pease, The Frontier State, p. 39.

[43]Moses, p. 554.

[44]Cole, pp. xxiv, 96.

[45]Art. IX, sec. 1.

[46]Art. X, sec. 1.

The bank issue, which figured so strongly in campaigns for the election of convention delegates and then had influenced the choosing of a president of the convention, caused the most bitter dissension during the writing of the constitution. Even before time for such resolutions was allotted,[47] the rules had to be suspended for two anti-bank resolutions. From this time the bank question was almost always before the convention, taking up fourteen days in direct debate and frequently linked on other days with other questions that came up. On June 17, an opportunity arose for test votes on the issue; a proposal to adopt the system of banking then in force in New York State was defeated, 99 to 60, but the proposal "prohibiting forever, within this State, the incorporation of any bank or company for banking purposes, and the manufacture and emission, by any company, copartnership, or individual, of any bank note, or other paper designed to be circulated as paper money" was also defeated, and by a greater margin, 102 to 58.[48] After this vote, the bank fight centered on the question of a regulated system.

The final compromise on banking stated that "no state bank shall hereafter be created nor shall the state own or be liable for, any stock in any corporation or joint stock association for banking purposes." However, it permitted the establishment of "corporations or associations with banking powers" by the General Assembly, though these would go into effect only if approved by the voters at the next general election.[49]

The Bill of Rights in the 1848 Constitution was substantially unchanged from the earlier 1818 Bill of Rights. An addition was at first adopted to Section 19, providing that "the legislature shall pass laws, with adequate penalties, preventing the intermarriage of whites with blacks, and no colored person shall ever, under any pretext, be allowed to hold any office of honor or profit in this state." However, Ninian Edwards, Jr. soon pointed out to his fellow convention members that if these rights could be taken away from Negroes, as stated in the above phrase, this would be an implied admission that Negroes were possessed of these rights in the first place as citizens of the United States. Since a majority of the delegates were unwilling to admit this, the provision was omitted from the constitution.[50]

On the same subject, party lines broke down in the debate over an article directing the General Assembly to pass laws prohibiting "free persons of color from immigrating to and settling in this state; and to

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[47]On the first day of the convention's meeting, a committee of five was appointed to prepare and report rules and regulations; these rules were adopted the next day, Tuesday, June 8. Cole, pp. 7, 21.

[48]The 58 votes for complete prohibition came from 52 Democrats and 6 Whigs, all from southern counties. Cole, Debates, pp. 101-3.

[49]Art. X, sec. 5.

[50]1847 Journal, pp. 470, 475-76. The provision originally passed by a vote of 82 to 32.

effectually prevent owners of slaves from bringing them into this State for the purpose of setting time free." This proposal had been introduced by Benjamin Bond, a Whig from southern Illinois, and provoked debates and ill feeling between many of the delegates from northern and southern Illinois. Members from northern Illinois believed that the provision was a "direct infringement of the constitution of the United States," while a southern Illinois delegate claimed that "our friends at the north do not understand our position at the south. They think us wrong because they cannot see the evils of this class of population [Negroes]among us."[51] Another delegate doubted that Negroes "were altogether human beings."[52] A northern delegate protested that the Negroes had been degraded because of servitude and lack of education: "Take the heroes of Buena Vista and Cerro Gordo and carry them into a foreign land, and subject them to servitude, and the fourth generation will be as degraded as the negro race;" he felt Negroes should be granted the "poor privilege of cultivating our soil and breathing our air."[53] And so the debate went, in its course bringing up practically every issue that was to divide the nation a few years later.[54] The vote on the proposition, like the debate, was divided along sectional lines. The article prohibiting Negro immigration passed 87 to 56, to be submitted separately with the constitution; only five negative votes came from delegates representing counties in southern Illinois.[55]

Article XII provided two methods of amending the constitution. As in the 1818 Constitution, a convention could be called by a majority of those voting for state representatives. By the second method, amendments could be proposed in either branch of the General Assembly and approved by the electorate. Some doubts were expressed in the convention as to this provision; Supreme Court Justice Walter B. Scates opposed the principle of giving the legislature the power to propose amendments to the constitution, as "they would never let it alone, but at every session would be tinkering at it." Other members, however, chided Judge Scates for maintaining that "all the wisdom of the State was centered in [this] convention," and expressed doubts that a provision for amending would mean numerous and extensive amendments, citing other state constitutions and the federal constitution as examples.[56] They were certainly correct in this assumption, for in practice the difficulty of amending the constitution under the second section soon became apparent. The General Assembly was forbidden to propose amendments to more than one article of the constitution at the same session: then, to reach the electorate, an amendment had to be approved not only by two-thirds of all the members elected in each house during one session, but also by a majority of the members of the next General Assembly. Then, the amendment would be submitted to the voters, where it could be put into effect by a majority of those voting for members of the

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[51] Cole, Debates, p. 221.

[52] Ibid., p. 228.

[53] Ibid., p. 213.

[54] Ibid. Most of the debate is found on pp. 201-38.

[55] 1847 Journal, pp. 155-56.

[56] Cole, Debates, p. 200.

House of Representatives at the same election. The constitution was never amended under these difficult procedures. This demonstrates again one of the main faults of the 1848 Constitution; in an attempt to correct past errors, the constitution was made extremely detailed, and then, as if the authors assumed that "wisdom would die with them and that nobody else should be permitted to disturb their labors, and interfere with what they had done,"[57] they made future changes in the constitution extremely difficult to accomplish.

The schedule for the 1848 Constitution provided for its submission to the voters on the first Monday in March, 1848, six months after the work of the convention was concluded. The constitution was submitted as a whole, with the exceptions of Article XIV, on Negro immigration, and Article XV, on the levying of the two mill tax with which to pay the current state debt. These articles were submitted separately, and a sample poll book was included in the schedule so that there would be no misunderstanding.[58]

Approving the Constitution, 1848

The important factor in the overwhelming approval of the constitution by the voters in March was probably the lack of strong opposition from any one group to its passage. Historian Theodore Pease estimated that only six newspapers in the state, some judges who would lose their jobs, and some "small fry politicians" opposed the constitution.[59] Germans, led by Gustave Koerner, opposed the suffrage requirement for citizenship before voting, but their opposition was mild because of their approval of other reforms.[60] Both political parties supported the campaign to approve the constitution, each with a lack of enthusiasm because of the many compromises it contained and jealous of the victories gained by the other side, but each afraid to raise the cry of "party constitution" for fear that party bickering would alienate the support necessary for its approval. The completed constitution was signed and approved by 131 delegates; seven, all Democrats, refused to sign it, and 24 were absent.[61]

Democrats were unhappy because the Whigs, with some help, had carried almost every point they cared to dispute. One prominent Democrat

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[57] Debates and Proceedings of the Constitutional Convention of the State of Illinois Convened at the City of Springfield, Tuesday, December 13, 1869, II, 1316.

[58] Schedule, sec. 12.

[59] Pease, The Frontier State, p. 408.

[60] Gustave Koerner, Memoirs of Gustave Koerner, 1809-1896 (Cedar Rapids, 1909), I, pp. 523-24.

[61] Cole, Debates, p. 944.

called the constitution "a mongrel affair" likely to "make trouble." The Chicago Democrat correspondent complained that "the convention is too horribly conservative to be of much use. Liberal principles stand no chance whatever . . ."[62] However, few Democrats were willing to provoke open hostility to the constitution; many of its provisions were decided improvements on the old constitution, and to the average voter the strict regard for economy displayed by the convention was attractive.[63]

Newspaper support was more enthusiastic than party support. Newspapers in the state kept interest alive in the constitution issue from the time the convention ended until the referendum in March six months later. The Aurora Beacon of February 10, 1848, probably expressed the general sentiments in saying that "'the new constitution is not perfect, for it is the work of fallible men. Critics and hypercritics, many good men, and some who might be suspected of sinister motives, may condemn it; but it is, on the whole, a good Constitution, a republican one--and an immense improvement upon the old instrument.'"[64]

On March 6, 1848, the constitution and Articles XIV and XV were submitted to the voters. The constitution itself was approved by a majority of almost four to one, 60,585 favoring it and 15,903 opposed. Only one county, Monroe, registered a negative vote. Four counties--Wabash, Lawrence, Mercer, and Piatt--cast over 97 per cent of their ballots for the constitution, and Cook County supported it by a margin of 53 per cent to 47 per cent.[65] Article XIV prohibiting Negro immigration was also approved by a large majority, 50,261 to 21,297. As in the convention, this vote was sectional; sixteen of the eighteen counties opposing the article were northern counties.[66] Nevertheless, most voters in the state, no matter where they lived, approved this article. Although they were opposed to slavery they did not want the Negro in Illinois; he was discouraged from immigrating, he could not serve in the militia, pay the poll tax, or vote. Article XV, which levied a tax on property to pay the state debt, received the smallest majority, 41,349 to 30,945, but also passed, with 57 per cent voting to accept the tax burden.[67] The constitution went into effect on April 1, 1848.

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[62] Ibid., p. xxix.

[63] The convention was so parsimonious that the members would not even approve expenditures for official reporting and printing of their debates. Cole, pp. 72-81.

[64] Pease, The Frontier State, p. 409.

[65] Pease, Election Returns, pp. 173-75.

[66] Ibid.

[67] Ibid., pp. 176-81.

IV

WARTIME CONVENTION, 1862

During the Civil War, a period of Republican political ascendancy and widespread suspicions of disloyalty, a convention strongly Democratic in makeup wrote a new constitution for Illinois. This convention was determined to incorporate Jacksonian Democratic principles and contemporary Democratic power into the state constitution. Its work was doomed to rejection at the polls.

Failures of the 1848 Constitution

Movements to revise the 1848 Constitution arose soon after its adoption. By 1850, Illinois had already started its transformation from a frontier rural economy to an urban industrial state. The 1848 document, written when government was suspect, curtailed state government wherever possible and hampered its attempts to deal with rapidly changing conditions.

The railroads came in earnest in the 1850's. The Illinois Central built a "Y" connecting Galena, Chicago, and Cairo, and four other railroads built lines between 1849 and 1856. The coming of the railroads completed the settlement of the state; in 1849 almost fifteen million government acres, or two-fifths of the state's area, remained unsold, but by 1857 all but 294,149 acres was settled. The building of the Illinois Central gave rise to the settlement of eastern Illinois, previously all but neglected; between 1850 and 1860 the population of the 49 counties through which the Illinois Central ran was said to have increased to over 800,000.[1]

While some of the older "frontier types" left for territory further West, particularly during the California gold rush, new settlers from the East and Europe more than made up for those who departed. The state's population more than doubled in the 1850's. Foreign settlement came from Germany after 1848, from French Canada, and from Scandinavia, as well as from other parts of Europe. Many of the immigrants settled in towns, and by 1860 Chicago had more foreign-born than native-born population.[2]

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[1]Pease, The Story of Illinois, p. 137.

[2]Ibid., pp. 137, 299.

The railroads assisted in industrializing Illinois agriculture. Advances in agricultural methods allowed fewer farmers to produce more food, and made possible the trend towards urbanization and manufacturing best seen in Chicago. After the Illinois-Michigan Canal was put into operation in 1848 and the railroads brought Chicago much of the shipping that once passed through St. Louis by river, the city's growth was phenomenal. Its population increased from under 30,000 in 1850 to over 100,000 in 1860. Other Illinois towns also grew from little trading centers to large urban centers; by 1860 the largest of these, Peoria and Quincy, had populations of over 20,000.[3]

The railroads created problems, however, which many Illinoisans felt should be remedied by a change in the state constitution. In the 1860's railroads were noted for outrageously high rates and were accused of charging unequal rates between equidistant points, discriminating in favor of long hauls. The Illinois Central was especially criticized for these practices, and suspected of attempting to evade its required payments to the state for its right-of-way. Therefore, demands were made for state control of rates and services.[4]

As the state industrialized, clauses in the 1848 Constitution were used to establish corporations and state banks, and constitutional change became a focus of anti-corporation and anti-bank sentiment. Banking forces in 1848 had successfully prevented a complete prohibition of state banks in the constitution, and a clause provided that a system of state banking could be created if approved by a popular vote. In 1851 the legislature over the governor's veto submitted a banking law to the people which was approved in the next general election.[5] However, several of the banks established under this system failed in the panics of 1854 and 1857 and a great number of those remaining were ruined in 1861 when the secession of the southern states depreciated the value of their bonds to fifty or sixty cents on the dollar.[6] Again the clamor arose, especially among Democrats, to prohibit in the constitution the formation of a state-supported banking system. The 1848 Constitution also failed to restrict private legislation, and allowed the creation of new corporations, "where, in the judgment of the General Assembly, the objects of the corporation cannot be attained under general laws."[7] In the 1850's scores of new corporations were created at each session of the General Assembly, arousing hostility and demands for change by traditionally anti-corporation Illinois farmers.

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[3]Ibid., p. 139.

[4]See, for example, Illinois State Register, January 7, 1862; Jonesboro Gazette, February 12, 1859.

[5]The vote in favor of a banking system carried 37,650 to 31,413; with some exceptions, counties south of Springfield voted against the banking bill, and counties to the north voted in its favor. Official Election Returns, November 24, 1851, State Archives, Springfield.

[6]Pease, The Story of Illinois, p. 143.

[7]Art. X, sec. 1.

Convention Referendums, 1856, 1860

In 1856, only eight years after the last convention, a referendum to call another was sent to the voters. Illinois newspapers made little mention of the call either before or after the election. That year political attention centered on the bitter state and national elections, where a major party realignment was taking place.

In May of 1856, the Republican party had been formed in Illinois, bringing together Free Soilers, old-line Whigs, and many Democrats. In the November elections the new party showed its strength, winning all the major state offices and electing four of the eight U. S. Congressmen. Fremont, the Republican presidential candidate, lost the state to Buchanan by only a narrow margin.[8] Republican strength followed sectional lines; counties from Henry northeast to DuPage and Lake went strongly Republican, while southern counties between the Mississippi and the Wabash with few exceptions voted firmly Democratic. Convention call votes also divided sectionally, with many northern counties voting overwhelmingly for a call and many southern counties registering less than 100 votes in favor of it. But only a few of all the voters--less than a third of the number who voted for governor--expressed themselves on the convention issue, and the call was decisively defeated.[9]

In 1860 a convention call was approved by the required majority.[10] Newspapers which in 1856 had hardly mentioned the convention call gave more attention to this one. The day before the election the Illinois State Journal carried a special front-page notice urging approval of the call and warning voters that since the 1848 Constitution required passage of a majority of those voting for representatives, a failure to vote would count as a negative vote.[11] After the election, the legislature passed an enabling bill[12] which provided for the election of delegates from the same districts and by the same procedures as state representatives. There were to be the same number of delegates as representatives, 75 at that time, and they would be compensated at the rate of $4.00 a day. They would be elected November 5, 1861, and convene January 7, 1862.[13]

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[8] Official Election Returns, November 4, 1856, State Archives, Springfield; Chicago Times, November 13, 20, 1856.

[9] Ibid.

[10] The official vote was 179,668 to 83,572. A total of 45 counties cast majority votes against the call; 39 of these were in southern Illinois. Official Election Returns, November 6, 1860, State Archives, Springfield. Transcripts of these returns are in the Illinois Historical Survey, Urbana.

[11] Illinois State Journal, November 5, 1860. The Journal's support of a convention was based on the hope that a new constitution could eliminate the two mill tax levied by the 1848 document in order to pay heavy state debts.

[12] Oliver M. Dickerson, The Illinois Constitutional Convention of 1862, Vol. I, No. 9, University Studies (Urbana, 1905), p. 5.

[13] Laws of Illinois, 1861, pp. 84-87.

The Partisan Delegation

The election of delegates was quiet and the total vote was only about half that of the 1860 general election, but the results were a reversal for the Republican party. Though the Republicans in 1860 swept the state elections as they had in 1856, and carried the state for Lincoln as well, in 1861 only 21 Republicans as against 45 Democrats[14] were elected delegates to the constitutional convention.

This reversal may have occurred because of Republican apathy. War had just begun, and interest, particularly Republican interest, did not center on a new state constitutional convention. Many Republican newspapers allowed the election to pass with slight notice and little partisan appeal. However, the Republican defeat might have resulted from a genuine effort to make the convention nonpartisan. The Illinois State Journal later claimed that Republicans in 1861 had entered into agreements "that the convention should be nonpartisan in character and that the Democrats. . . should be liberally represented."[15] The Urbana Democrat commented that "after years of most intense political excitement, it seems strange to see old party lines entirely blotted out and the people casting about, making choice of the best and most deserving without respect to former political organization."[16] One historian credited the election of a Democratic majority to the simple fact that most of the prominent lawyers in the state were Democrats.[17]

However, the election of a Democratic majority to the constitutional convention could also be interpreted as a vindication of Democratic policies. Many of the state's problems at that time involved banks, corporations, and railroads. The Democratic party had been the traditional enemy of these powers and a friend of the farmer, who was still the majority voter in Illinois. If the delegate vote was a genuine expression of Democratic sympathies, it was a faithful forecast of the coming election of a Democratic General Assembly in 1862, an election usually attributed to disillusion with Republicans because of early Union defeats in the war, corruption in the war department, and arbitrary arrests by federal authorities for "sedition."[18] In any case, the Democratic delegates believed they had received a mandate from the people to write a constitution based on Democratic principles. In this belief they wrote a partisan constitution which was doomed to rejection at the polls.

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[14]Seven other delegates were Fusionists or Union Democrats and the political affiliation of two others is doubtful. Moses, II, 655.

[15]Illinois State Journal, October 13, 1869.

[16]Dickerson, pp. 7, 8.

[17]Ibid., p. 8.

[18]Pease, The Story of Illinois, p. 170.

Convention Proceedings, 1862

The partisanship which was to be such a factor in the constitution's defeat became apparent in the organization of the convention on January 7, 1862, in the capitol building in Springfield. The night before the Democrats held a caucus and selected the officers for the convention who were duly elected the following day. All of these men were from the southern part of the state.

Convention proceedings soon aroused fears that the delegates were exceeding their legal powers. In 1862 this was a profound cause for concern, since many southern states had recently called conventions in which new constitutions were written repudiating the authority of the federal government. Now the Illinois delegates decided they could not take the oath for convention members prescribed by the legislature's enabling act. It required that they promise "to support the constitution of the United States and of this state," but they felt it inconsistent to swear to support the very constitution they were assembled to change. Therefore, the majority decided to take an oath to "support the constitution of the United States and faithfully discharge the duties of your office as delegate of this convention for the purpose of revising and amending the constitution of the state of Illinois."[19] This decision aroused some apprehension, especially Republican newspapers such as the Chicago Tribune and Illinois State Journal, in which editorials expressed the opinion that the convention itself was not legal because the members had refused to take the prescribed oath.[20]

If the oath controversy had worried some observers, the next day's action was even more disturbing. A committee was appointed to determine whether the convention had the power to appoint its own printer despite the fact that the legislature in the enabling act had already made such a provision. The majority report of the committee stated that the convention had full power to contract for its printing, and "that after due organization of the convention, the law calling it is no longer binding, and that the convention has supreme power in regard to all matters incident to the alteration and amendment of the constitution." In its exploration of the authority of the constitutional convention, the majority report of the committee went even further, stating that it considered the convention to be limited in power only by the federal government, and not in any way by the state. This report was adopted by the convention by a vote of 55 to 14.[21]

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[19] Journal of the Constitutional Convention of the State of Illinois Convened at Springfield, January 7, 1862 (Springfield, 1862), p. 3. This will hereafter be referred to as the 1862 Journal.

[20] Dickerson, pp. 10, 11.

[21] 1862 Journal, pp. 19-22. Some of the early criticism of this interpretation was muted by the adoption of a resolution on the same day providing that all changes in the constitution were to be submitted to a vote of the people.

Acting on this definition of the convention's power, the delegates assumed many powers which were not clearly theirs and which eventually led to charges of disloyalty. Congress had proposed an amendment to the U. S. Constitution and provided specifically that it be ratified by the state legislatures rather than conventions. Nevertheless, the constitutional convention assumed the power to ratify this amendment, which sought to prevent any future exclusion of slavery in the nation, and approved it on February 8.[22]

Another controversial action involved the redistricting of the state for U. S. Congressional elections, needed because Illinois had been allotted an additional seat in the House of Representatives. The convention reapportioned the state into seven Republican and seven Democratic districts, pending approval by the voters.[23] Then the convention adopted an ordinance appropriating $500,000 in 10 per cent bonds for the relief of sick and wounded soldiers,[24] despite the fact that the convention had no authority to issue bonds or appropriate money. The state officials refused to issue the bonds, and the whole plan came to nothing.[25]

The convention also began an investigation of the administration of the Republican Governor, Richard Yates, asking him on January 13 to furnish the convention with the amount and description of all indebtedness of the state, the names and salaries of all persons appointed by him to office since the war began, all contractors who had been or were to be paid out of the treasury, a copy of all contracts, and a list of quartermasters and other officers from the federal government, "plus all correspondence on this subject."[26] Clearly this was a Democratic attempt to embarrass the governor; Governor Yates on his part suspected the convention of disloyalty, as he said in a letter to Lyman Trumbull:

> Secession is deeper and stronger here [in the convention] than you have any idea--Its advocates are numerous and powerful, and respectable. . . . I believe the leaders [of the convention] intend to disarm the state government if they can--They would like civil war in Illinois. . . .[27]

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[22] 1862 Journal, p. 358. The next legislature ratified this amendment as prescribed by Congress. Three states approved this amendment, thought to be a conciliatory attempt to end the war: Illinois, Ohio, and Maryland. Dickerson, p. 38.

[23] Ibid., pp. 1098-99.

[24] Ibid., p. 479.

[25] Dickerson, p. 38.

[26] 1862 Journal, pp. 121-22.

[27] Letter from Governor Yates to Lyman Trumbull, February 14, 1862. Trumbull Papers, Illinois Historical Survey.

The convention members also investigated a widely-held criticism that the Illinois military was being inadequately supplied, though the committee report affirmed that, despite "prejudiced rumors and speculations that floated over the country and filled the atmosphere around the capitol," the soldiers were indeed well provided for.[28]

In this devisive and partisan atmosphere the convention adjourned, its finished constitution signed by only 54 of the 75 original delegates. Of the Republicans, only the three Chicago members were willing to sign the document.[29]

The Proposed Constitution of 1862

The constitution written by the 1862 convention would have been in many ways an improvement over the 1848 Constitution. Important parts of it were later adopted in the 1870 Constitution, including its provisions for the enactment of homestead and exemption laws, the establishment of free state schools,[30] its removal of salary limitations for state officers[31] and its requirement of a two-thirds vote in each house to overrule the governor's veto.[32] Although resolutions suggesting ways of controlling railroad rates were not adopted,[33] a provision holding the Illinois Central Railroad Company to its obligations to the state[34] and another forbidding towns to mortgage themselves to finance the building of railroads[35] were repeated in the Constitution of 1870. The 1862 constitution would have limited the passage of private bills[36] especially those creating corporations.[37] The banking and currency article, controversial enough to be submitted separately to the voters, prohibited the creation of any banking corporation or association in the state in the future, and virtually abrogated the charters of those banks existing in the state at that time. No checks or any other written instruments could be circulated as money in the place of specie.[38]

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[28] 1862 Journal, pp. 833-35.

[29] Ibid., pp. 1114-15.

[30] Constitution of 1862, Art. X, sec. 3. The proposed 1862 constitution can be found in the 1862 Journal and various other sources; references here will be given by article and section only.

[31] Art. V, sec. 17; Art. VI, sec. 14.

[32] Art. V, sec. 14.

[33] One such resolution is found in the 1862 Journal, p. 148.

[34] Art. IV, sec. 38.

[35] Art. IV, sec. 35.

[36] Art. IV, sec. 22, 30.

[37] Art. IX, sec. 2.

[38] Art. XVII, sec. 3, 4, 5.

Even Democrats criticized the banking provisions as outdated, fit for Jackson's day with its simple agricultural economy rather than the 1860's, when increased commerce and industrialization in the state made some form of banking and paper money necessary.

While traditional Democratic principles curtailing banks, railroads, and corporations were written into the 1862 constitution, other provisions were even more frankly partisan. The suffrage article removed the restriction against alien voting in Illinois after a year's residence because recent immigrants were expected to vote Democratic. Another provision would have reduced from four to two years the term of office for the governor and other state officers, and would have called an election for new state officers in 1862, after Governor Yates and other Republicans had served only half their terms.[39] The Democratic convention delegates reapportioned the state along partisan lines for the election of state legislators. A Democratic legislature in 1859 had tried to reapportion the state in its favor, but Republican Governor Bissell had vetoed the bill, and a Republican General Assembly in 1861 had redistricted the state on Republican lines. Now, the Democrats at the constitutional convention attempted to do the same thing, and their apportionment of the state legislature was admittedly gerrymandered to favor their party.[40]

A final partisan effort, particularly strong since the Democrats at the convention were controlled by members from the southern part of the state, was made to enact clauses regarding the position of Negroes in Illinois. Again, the introduction of this subject brought about a sectional dispute; northern delegates considered more legislation regarding Negroes in the state as unnecessary and likely to arouse more bitterness, while southern delegates insisted that their problems with Negroes were not understood in the rest of the state.[41] Finally, three clauses were adopted, to be submitted separately at the time of voting for the constitution. The first stated that "no negro or mulatto shall migrate to or settle in this state, after the adoption of this constitution." The second section prevented the Negro or mulatto from voting or holding office in the state, and the third instructed the General Assembly to pass all laws necessary to implement the other two provisions.[42] The people of Illinois evidently approved this action by the convention; a measure of attitudes of state residents during the Civil War towards Negroes is shown by the fact that the Negro clauses were the only work of the convention to be approved by a majority of the voters.

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[39] Art. V, sec. 1.

[40] Dickerson, pp. 46, 47; map of proposed reapportionment on p. 53.

[41] Ibid., p. 13.

[42] The delegate vote on the immigration clause was much closer than that on the suffrage clause. Section 1 passed, 39-25; Section 2, 57-7. The delegates were overwhelmingly opposed to Negro suffrage. 1862 Journal, pp. 691-93.

Rejection at the Polls

The 1862 constitution, written as it was to vindicate Jacksonian principles and to assist in maintaining the power of the Democratic party in the state without any compromise with the majority Republicans, alienated with disastrous results the many Republican newspapers in the state. By seizing on two main issues, disloyalty and high taxes, the Republican papers campaigned successfully against adoption of the proposed constitution.

During the convention sessions, the Republican papers had criticized members for their refusal to take the oath of allegiance to the 1848 Constitution, for their investigations of Governor Yates, and for their assumption of other extraconstitutional powers. However, the tumult and hysteria of a civil war gave them their most serious charge against the convention--the charge of disloyalty. By the end of the first week of convention meetings, the Chicago Tribune warned that "the people of Illinois will do well to watch the operations of a body known to comprise many actual sympathizers with the rebellion, rank secessionists at heart, who would be pleased to carry with them all Egypt into the Southern Confederacy."[43] Governor Yates voiced similar suspicions to Lyman Trumbull. Charges were made that "a majority of the members of the convention were members of the Knights of the Golden Circle," a pro-secessionist group. These charges were considered serious enough to be investigated by the convention, whose committee, after an intensive public investigation, found no substance whatsoever to the claim.[44] Nevertheless, the newspapers, especially the Chicago Tribune and Illinois State Journal, continued during the campaign for approval of the constitution, to raise the specter of disloyalty. A vote for the constitution was warned to be not only a vote against the Republican party, but against the national government and the war.[45] The Negro clauses, apportionment provisions, and alleged increases in government costs were also attacked.[46]

Democratic newspapers vigorously defended the constitution for its homestead and mechanic's lien provisions, its Illinois Central Railroad clause, and its corrections of defects in the 1848 document. The Democrats pointed to the repeal of the two mill tax, one of the objectives in calling the convention in the first place, as a benefit to the taxpayer, while the Republicans claimed that the constitution would raise taxes perhaps as much as $213,000 more per year. This tax issue seemed to be the most widely discussed; out of fourteen exchanges between leading state newspapers as printed in the Chicago Journal one-half used the tax issue as their main argument.[47]

However, the loyalty issue in the midst of wartime, especially in a civil war, was probably the most important factor in the defeat of the constitution, and the Republican papers were accused of raising this issue purely for partisan purposes. The Democratic Chicago Times described their actions bitterly the day following the election:

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[43]Dickerson, p. 48.

[44]Ibid., pp. 50, 51.

[45]Ibid., p. 22.

[46]Republican papers of May and June, 1862, as quoted in Dickerson, p. 21.

[47]Ibid., pp. 21, 22.

> The majority of the Convention were denounced as a band of secession conspirators, and the constitution has never been alluded to by a Republican newspaper in any more gracious terms than a "secession ordinance," an "Egyptian swindle" or an "accursed thing," and no known supporter of it has escaped the epithets of "secessionist" and "traitor," and the result of the election, according to these Republican newspapers, was to decide whether Illinois is a loyal or a secession state. Other elements entered in. The influence of the Federal Government as far as congressmen could aid was thrown against the constitution, as well as [the influence of] banks, railroads and express companies.[48]

This adamant opposition to the constitution was more than enough to insure its defeat on June 17, 1862, by a vote of 141,103 against to 125,052 for the constitution. The articles on banking and currency and congressional apportionment were also defeated, by narrower margins.[49]

The Negro clauses were approved, although they did not take effect because of the defeat of the constitution. The clause preventing Negro and mulatto immigration was approved by a margin of two and one-half to one; the clause forbidding suffrage and officeholding of Negroes, by a margin of almost six to one.[50] Although northern counties brought in majorities against the constitution and southern counties produced majorities approving it, the vote on the Negro propositions was overwhelmingly favorable statewide. Only five counties voted against all three sections of the article on Negroes, and only six counties voted against the proposition that "no negro or mulatto shall have the right of suffrage, or hold any office in this state."[51] In the midst of the Civil War, and only eight years before the ratification of the Fifteenth Amendment to the U. S. Constitution, the voters of the state were unwilling to give the black man the rights of citizenship in Illinois.

The attempt to provide much-needed changes in the Illinois constitution thus ended in failure. The 1862 constitutional convention alienated several groups with its extraconstitutional actions and its partisan constitution, and the wartime atmosphere further allowed Republicans to charge that the product of the convention was treasonable. While Illinois had to continue several more years under the defective provisions of the 1848 Constitution, the 1862 convention did show some accomplishments; many of the provisions worked out by the convention were incorporated into the 1870 Constitution, and the 1869-70 convention delegates were able to profit to some extent by earlier mistakes in producing a compromise document that could command bipartisan support.

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[48] Chicago Times, June 18, 1862.

[49] The vote on banking was 126,538 for and 130,339 against; on apportionment the vote was 125,732 for, 132,339 against. Official Election Returns, June 17, 1862, State Archives, Springfield.

[50] The first section carried, 178,956 to 71,306; the second, 211,920 to 35,649; the third, 198,938 to 44,414. Ibid.

[51] Dickerson, p. 55.

V

THE FOURTH CONSTITUTIONAL CONVENTION IN ILLINOIS, 1869-70

The Call for a Convention

As soon as the Civil War ended and Reconstruction began, agitation resumed in Illinois for changes in the 1848 Constitution. The need for an updated constitution increased in the 1860's as the transformation of Illinois from an agricultural to an urban industrial state accelerated. The population of the state increased by about 50 per cent between 1860 and 1870 despite the turmoil of the war. The population movement towards Chicago was speeded up even more; the city nearly tripled in size during the decade.[1] Chicago was the disproportionate leader in the state's industry; in 1870 the gross value of manufactured products in Cook County totaled $92 million, while the next highest county total was $8 million in Peoria County.[2]

The highly specific and detailed provisions of the 1848 Constitution were inadequate to cope with problems of a growing urban industrial state, particularly in the judicial, police, fire and sanitation departments. The salary limitations imposed for the sake of economy in 1848 were circumvented by various subterfuges; the legislature usually voted the governor "expense money" for maintaining the executive mansion in an amount great enough to adequately supplement the $1500 he was allowed under the constitution.[3] Judges were paid additional sums for minor "services rendered," or their clerks were granted large salaries, part of which would go to the judges.[4] Such methods of ignoring the letter of the constitution added little to the moral climate of the state government in Springfield. The most serious defect still awaiting correction was the ever-increasing flood of private bills in the General Assembly, which had reached tremendous proportions, dwarfing the number of public bills.[5] It was impossible

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[1] U. S., Bureau of the Census, Fifteenth Census of the United States, (1930) I: pp. 279-80.

[2] Ernest L. Bogart and Charles M. Thompson, The Industrial State, 1870-1893, Vol. IV: Centennial History of Illinois (Chicago, 1922), pp. 392-93.

[3] Ibid., p. 2.

[4] Adlai E. Stevenson, "The Constitutional Conventions and Constitutions of Illinois," Illinois State Historical Society, Transactions, 1903, p. 26.

[5] The legislative session of 1867 passed 1,071 private and only 202 public laws; the 1869 session passed 1,188 private and 385 public laws. Laws of Illinois, 1867, 1869. In these years the private and public laws were bound separately.

for the legislators to know what each law was about when hundreds were passed at each legislative session. Charges of corruption were freely passed on all sides.

The first move towards calling a fourth constitutional convention came in Governor Richard Oglesby's message to the newly-convened legislature on January 7, 1867. Oglesby recommended a referendum at the next regular election on the question of calling a constitutional convention. He apparently thought it politic not to mention the mass of private bills passed by the legislature as a reason for a new constitution. Instead, the defects of the 1848 Constitution which he mentioned were the short legislative sessions, restricted by salary limitations to 42 days, the insufficient number of senators and representatives, the obsolete two mill tax, the inadequate judicial system, "odious discrimination against personal liberty, which ought to be expunged," by which he probably meant the provisions against Negro settlement in Illinois, and low salaries for state officials.[6] Following the governor's recommendations, the Assembly passed a joint resolution to submit a convention call to the electorate.

The proposed call obtained immediate newspaper support. In fact there was such impatience for a convention that the Chicago Tribune and other newspapers favored ignoring the law and holding the election of delegates at the same time as the convention referendum. The hope was that delegates could be elected in April, meet in June, and prepare a constitution for ratification in September, which would go into effect in January, 1868. Although this plan came to nothing, the Illinois State Journal, in speaking favorably of it, claimed that "the need of a revision of the constitution is so pressing that there is a disposition even to strain a point, in order to attain the end."[7] However, despite such strong newspaper support for a convention call, the voters approved it at the general election on November 3, 1868 by a majority of only 726 votes.[8]

Selection of Convention Delegates

The delegates were to be chosen at the general election in November, 1869 and the convention was to meet in Springfield in December, 1869. The 1848 Constitution specified that the number of delegates equal the number of state representatives, 85 at that time. They would be paid $6.00 a day while the convention was in session.[9] Some efforts

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[6] Illinois Senate Journal (1867), p. 39.

[7] Illinois State Journal, January 3, 1867.

[8] Illinois Senate Journal (1869) I, 470.

[9] This enabling legislation can be found in Laws of Illinois (1869), p. 97, and in the Debates and Proceedings of the Constitutional Convention of the State of Illinois Convened at the City of Springfield, Tuesday, December 13, 1869 (hereafter referred to as the Debates, 1869-70), II, 1893.

were made to avoid the partisanship which marred the convention of 1862. Several candidates from Cook County organized themselves into a bi-partisan "People's Party." Former State Supreme Court Judge J. D. Caton of Ottawa declined the Democratic nomination for delegate with these words:

> A constitution for a state which must be a permanent, fundamental law that may be expected to outlive party questions, should be founded upon a broader base than can be afforded by the platform of any party. Party predilections, interests, and biases, should be quite forgotten, and only the general permanent good should be allowed an influence in a constitutional convention. I had hoped that both parties would be influenced by these considerations, and would have elected men without party consideration.[10]

Many partisan newspapers, however, rejected nonpartisan efforts. The Republican Chicago Evening Post stressed the importance of sending to the convention men capable of framing a constitution "Republican in all its features." The State Journal criticized the Chicago effort as a "mongrel ticket," sure to make trouble for the Republican party, while the State Register urged election of Democratic delegates who would insert into the constitution specific prohibitions of Negro suffrage in Illinois.[11]

The November 2, 1869 vote for delegates resulted in the election of almost an equal number of Republicans and Democrats.[12] The entire nonpartisan People's party ticket was elected in Cook County, and this delegation held the balance of power at the convention. Outside Cook County, however, the delegates reflected the sectional division of Illinois along party lines. The entire delegation from southern Illinois, with two exceptions, was Democratic, as was the west central delegation. All but four of the Republican delegates came from the northern and east central counties.[13] This sharp cleavage in the state by party membership, which practically disenfranchised minority party members in each section, was one of the problems taken up at the convention.

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[10] Illinois State Register, October 6, 1869.

[11] Illinois State Journal, October 13, November 3, 1869; Illinois State Register, November 1, 1869.

[12] Some discrepancy exists as to the exact party affiliation of the delegates. Bogart and Thompson in The Industrial State list 44 Democrats, 43 Republicans, and one Independent, totalling the 85 originally elected plus three later elected to fill vacancies. Edward Rummel in The Illinois Hand Book of Information for the Year 1870 listed 43 Republicans, 36 Democrats, three Independent Democrats, one Independent, and one, Orville H. Browning, with no party affiliation (pp. 176-78). Whatever the exact makeup, it is obvious that the two parties were nearly equal in strength.

[13] Edward Rummel, ed., The Illinois Hand Book of Information for the Year 1870 (Springfield, 1870), pp. 129-32.

The delegates who assembled at the capitol building in Springfield on December 13 were a varied group which included, as had other conventions, some of the most distinguished legal authorities and politicians in the state. Among the most prominent and active of these was Orville Hickman Browning, close friend of Lincoln and former Whig, Republican U. S. Senator in 1861, and Secretary of the Interior and acting Attorney General under Andrew Johnson in 1866.[14] By the time of the convention his conservative and anti-Negro suffrage views had led him to reject party affiliations on either side. Reuben Benjamin from Bloomington, an authority on constitutional law, played an important role in the convention. He was credited with writing and revising the Bill of Rights and was instrumental in bringing the convention around to favoring restriction of railroad corporations.[15] One of the best-known convention members was Joseph Medill, Republican party founder, Chicago delegate to the convention, and former editor of the Chicago Tribune.[16] With Medill's participation, the convention was assured of the support of at least one powerful newspaper in the state.

Elliott Anthony, Chicago lawyer, was also active in the convention proceedings. He was later the author of The Constitutonal History of Illinois, and had been a member of the 1862 convention. One delegate, John Tincher of Danville, was currently serving as a state senator in the 26th General Assembly, and the convention delegates also included two representatives in the current Assembly, L. D. Whiting and Jonathan Merriam.[17]

For the first time at an Illinois constitutional convention the overwhelming majority of the delegates, 53 of the original 85, were lawyers. Whereas farmers had outnumbered lawyers in 1847, now lawyers outnumbered farmers by more than four to one. The lawyers as a group were younger than the men in other occupations; 25 of the 30 delegates under forty were lawyers. This indicated a trend towards almost exclusive legal participation in constitution making in Illinois which was to continue in the 1920 convention; the older members, who had felt competent to consider changes in the constitution despite their lack of legal training, were a declining group.[18]

The birthplace of the delegates also showed changes in Illinois' population makeup since the 1847 convention. The number of natives of the southern states of Kentucky, Tennessee, and Virginia declined from more than one-third of the convention in 1847 to less than one-fifth in 1869. The number of natives of the New York and New England areas increased proportionately. The fact that only eleven members were native Illinoisans indicates the continuing westward movement of U. S. population.[19] Although in 1870 20 per cent of the state's population

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[14]Newton Bateman, ed., Historical Encyclopedia of Illinois (Chicago, 1900), p. 63.

[15]Bogart and Thompson, p. 19.

[16]Bateman, Historical Encyclopedia of Illinois, p. 368.

[17]Rummel, pp. 63-64, 176-78.

[18]In 1818, only five delegates had legal training.

[19]Rummel, pp. 176-78.

was foreign-born, only five delegates to the convention were naturalized citizens, two originally from England, two from Scotland, and one, Joseph Medill, from Canada. German and Irish immigrants in the state at that time numbered over 400,000,[20] but no representative from either of these groups was elected to the convention, and few of their particular problems were considered in its proceedings.

Convention Proceedings

When the elected convention members assembled in Springfield on Decmeber 13, 1869, the principle of nonpartisanship received an immediate test in the fight over a temporary chairman. Downstate Republicans who wished to organize the convention on a party basis proposed William Cary from Galena. Democrats, who lacked the power to dominate a partisan convention, and Cook County Republicans, backed John Dement, an "old pioneer" who had lived in Illinois when it was a territory and was now attending his third constitutional convention. A voice vote was taken, and since no one was yet qualified to rule on the vote, both were declared elected, both proceeded to the front of the hall and attempted to take the chair, and both ruled on motions for an hour or so. The principle involved was important enough that each man refused to give up the chair, although the whole matter was treated with laughter and good will. Finally nonpartisanship won out, and John Dement was elected temporary chairman by a vote of 44 to 32.[21]

The maneuverings over organization of the convention continued with the election of a permanent chairman. The bipartisan Cook County delegation had decided to put forward Republican Charles Hitchcock since the state was overwhelmingly Republican, and then to alternate the other offices between the two parties.[22] In opposition to this plan the downstate Republicans nominated Joseph Medill for permanent chairman. Hitchcock was elected by a narrow vote, 45 to 40, so the nonpartisan plan was followed. A Democrat, John Q. Harman of Cairo, was elected secretary; a Republican, Daniel Shepard of Chicago, was elected first Assistant secretary; a Democrat was elected second assistant, and so on.[23]

The convention's bipartisan organization instilled a mood of conciliation and compromise into the convention, a difficult task in this period just after the Civil War; feelings between the two parties

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[20] In 1870 there were 515,198 foreign-born Illinois residents. These included 213,000 Germans and 225,000 from the British Isles, mostly Irish. Pease, The Story of Illinois, p. 187.

[21] All those voting for Cary were downstate Republicans, who wished to organize the convention on a party basis. Debates and Proceedings of the Constitutional Convention of the State of Illinois Convened at the City of Springfield, Tuesday, December 13, 1869, I, 1-6. Hereafter cited as 1869-70 Debates.

[22] Elliott Anthony, The Constitutional History of Illinois (Chicago, 1891), p. 116.

[23] Most votes for officers carried by a narrow margin as downstate Republicans continued to resist the plan. Rummel, p. 174; 1869-70 Debates, I, 52-53.

were bitter, especially as Reconstruction continued under the Grant administration and the controversial Fifteenth Amendment guaranteeing Negro suffrage was certain to be ratified. However, most of the convention members remembered that partisanship had discredited and defeated the 1862 constitution. No matter how heated the debates became, nor how sharp the ideological divisions between the two parties, great efforts were made in the convention to refrain from dragging political animosities into constitution making.

After the election of a temporary chairman for the convention, fully three and one-half days of the convention's time was taken up with a discussion of which oath to take, the same question which had so bothered convention members in 1862. The long, serious and sometimes bitter debate over what seems to be a trivial issue actually was pertinent, since the entire question of the function of a convention and a constitution was considered and analyzed.

The 1869 General Assembly's enabling act had specifically stated that members were to swear "to support the Constitution of the United States, and of this State." However, James Allen of Crawford County, who was to become extremely active in the convention, brought up the familiar point that the members could hardly in good faith swear to support the state constitution when they were gathered to change or rewrite it. William H. Underwood replied that he personally had supported the oath provision in the enabling act as a member of the House of Representatives because of past experience in seeing what a convention might do in the matter of extraordinary powers if the members did not first declare their allegiance to certain principles and controls as expressed in the state constitution; he specifically cited the Lecompton Constitution in Kansas and the efforts of the Illinois convention in 1862 as examples.[24]

Some of the members still subscribed to the philosophy of the 1862 convention. Delegate William Archer described a convention as "an elementary body, deriving its authority from no source; absolute sovereignty and paramount authority were the attributes of such a body; . . . it was, as it were, the people en masse." Archer, a member of the 1847 convention also, recalled that at that time it was only considered necessary to take an oath to support the U. S. Constitution, and not that of the state.[25]

However, the majority of the members did not agree with Archer's definition of the powers of the convention and, remembering the mistakes of 1862, feared public disapproval of such a definition as well as the time spent in debating the point. At first, the delegates agreed on a compromise resolution offered by Orville H. Browning, which would have modified the wording of the oath. However, they overturned this decision on the fourth morning of the convention in

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[24] 1869-70 Debates, I, 10-11. The entire debate over the oath is found on pp. 7-49.

[25] Ibid., I, 8.

a stormy session during which at least one member walked out. It was finally agreed to make the oath prescribed by the legislature voluntarily; a portion of the members took the oath and the convention proceeded to other business.[26]

A committee on rules was appointed, and reported the next day, having based their rules almost entirely on the work of the 1862 rules committee.[27] Thirty-four standing committees were appointed to consider in working sessions the various sections to be changed or inserted into the constitution.[28] Much of the convention's time was wasted in quarrels over details such as the matter of providing postage stamps and stationery for the delegates, and in debates over mischievous resolutions. These time-wasting trivialities contributed to making the convention session the longest in Illinois constitution making up to that time; the convention adjourned on May 13, 1870, after having been in session five months.

The Constitution of 1870

The constitution produced by the convention was longer and more detailed than earlier constitutions, signifying the growth in complexity of state needs and problems. It can be considered a good effort on the part of the members to correct past mistakes, remedy current problems, and look imaginatively towards the future. Its major drawbacks were the extensive detail written into the constitution which could have been left to statute and which soon made many sections obsolete, and the unwillingness of the members, despite their denials of omnipotence, to provide an easy method of changing the constitution whenever future conditions made this necessary.

Many of the articles of the constitution including the preamble, the boundaries article, and Bill of Rights, were essentially unchanged. Under the leadership of Judge Benjamin, the archaic language of the Bill of Rights was streamlined and clarified in some sections.[29] A phrase was added to Section 5, guaranteeing the right of trial by jury, and to permit a jury of less than twelve men in civil trials before justices of the peace, but few other changes of any substance were made from the 1818 and 1848 Bill of Rights.

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[26] Ibid., I, 49.

[27] Ibid., I, 58.

[28] For a list of these committees, the members of each party and their affiliations, see Rummel, pp. 179, 180, 182.

[29] "The Four Constitutional Conventions of the State of Illinois," Journal of the Illinois State Historical Society, XI (July, 1918), p. 231.

In writing Article IV on the legislature, the convention members followed the lead of the 1862 convention in lowering age requirements for representatives and senators, increasing the number of members of each house, and removing the restrictions on salaries imposed in the 1848 Constitution, thus accomplishing some of the major purposes for which the convention was called. The number of senators was increased from 25 to 51, and the number of representatives from 85 to three times the number of senators, or 153.[30] The representatives were to be elected by a process of cumulative voting, also termed minority representation.[31]

Minority representation or cumulative voting was an attempt to solve the problem in Illinois political history of the geographical division between the Republican and Democratic parties in the state. In 1870, almost every legislative district in southern and western Illinois was Democratic, and the Republicans dominated the eastern and northern sections of the state.[32] This situation, besides dragging national political issues into the General Assembly and making effective legislation for the whole state difficult, had the result of virtually disenfranchising minority voters in each section with regards to representation in the state legislature. Allowing for the few minority representatives in each section, there remained of those who voted in the 1868 presidential election over 100,000 northerners voting for the Democratic candidate who were unrepresented by a Democrat in the House, and over 50,000 southern Illinois Republicans who were similarly unrepresented.[33] This problem had been discussed in newspapers and speeches, and the convention was expected to examine the matter.

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[30]Article IV, sec. 6, 7, 8. The original constitution of 1870 is found in the 1869-70 Debates, pp. 1871-80, and various other sources. References to the constitution will be given by article and section only.

[31]An original section 7 and section 8, concerning representatives, was to come into effect only if minority representation, submitted to the voters as a separate section, was not approved. Since minority representation was agreed to by the voters, the original sections 7 and 8 were replaced by the minority representation section. The original section allowed for the same number of representatives, but provided for an increase in their number as the population increased. 1869-70 Debates, II, 1872.

[32]Of the 85 members of the 1869 House of Representatives, only eight of the sixty Republicans were from south of Springfield, and only five of the 25 Democrats represented districts north of that line. George Blair, "The Adoption of Cumulative Voting in Illinois," Journal of the Illinois State Historical Society, XLVII (Winter, 1954), p. 373.

[33]Ibid., p. 375.

The first move came on December 17 when Robert Hanna of Wayne County offered a resolution suggesting that the proper committee should consider the advisability of recommending a plan for giving the minority party in each district a chance to elect its candidate. This suggestion was followed through by the committee on electoral and representative reform, headed by Joseph Medill, which suggested the plan of cumulative voting; it provided that each voter "may cast as many votes for one candidate as there are representatives to be elected"--in this case three in each district--so that a candidate could receive from each voter either one, one and one-half, or three votes. This plan had received a great deal of attention in Europe, as well as the United States; John Stuart Mill had endorsed it and it had been put into practice in some of the Swiss cantons and in a few municipal elections in Pennsylvania. If approved in Illinois, this would be the most extensive trial of cumulative voting yet held.[34]

Medill praised this proposed experiment, calling it "the only true democratic plan of representation," and claiming that it would "secure representation for our long enduring Republican friends in Democratic Egypt . . . and the swallowed-up and buried-under Democrats of northern Illinois." While other convention members were not so enthusiastic, they agreed to let the voters decide, and chose to put the minority representation provision on the ballot by a vote of 46-17.[35]

In Article IV, the convention also attacked another of the major problems of the legislature--the matter of private bills. As in the rejected 1862 constitution, bills were required to be read on three different days, with no exceptions, and the General Assembly was expressly forbidden to legislate on 23 specific subjects which had taken up so much time before, such as granting divorces, regulating county and township affairs, incorporating cities, towns, or villages, regulating the rate of interest on money, and many other similar matters, including a general declaration that "in all other cases where a general law can be made applicable, no special law shall be enacted." Also forbidden was the power to "release or extinguish, in whole or in part, the indebtedness, liability, or obligation of any corporation or individual to this State or to any municipal corporation therein," thereby closing the door on one practice where the temptation to accept graft or bribery was obvious. As well as restricting the General Assembly's power to enact certain laws, the constitution also urged the passage of legislation on other matters. As in 1862, the Assembly was to pass "liberal Homestead and Exemption laws," as well as to legislate for greater safety in mining and for the establishment of private and public roads. Because of the controversy over the expense of the new capitol building in Springfield, the Assembly was to limit the cost of the building to $3.5 million unless more funds were approved by referendum.[36]

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[34] 1869-70 Debates, II, 1726.

[35] Ibid., II, 1726-29.

[36] Art. IV, sec. 13, 22, 23, 33.

While no restriction was set on the length of legislative sessions, the legislature was forced to adjourn by July 1 because of the provision which stated that all legislation would take effect on the first day in July after its passage unless two-thirds of both houses chose to waive this provision.[37]

In Article V, the power of the governor was strengthened by the constitution makers. He was given a stronger veto, which could only be overturned by two-thirds of the members elected to each house, a provision which had been defeated by the Whigs in 1848 and adopted by the Democrats in 1862. The governor was also given the power to remove as well as to appoint state officials.[38] During the writing of this article, the convention members worked closely with Governor Palmer, who enjoyed excellent relations with the delegates, in contrast to Governor Oglesby in 1862. The governor, himself a member of the 1847 constitutional convention, encouraged and supported the work of the delegates in 1870, both during the writing of the constitution and during the campaign for its passage. The convention members, in turn, respected the governor's ability enough to ask that all his veto messages be published so that they could be studied for recommendations for constitutional change.[39] Undoubtedly, their respect for Palmer aided the delegates in their decision to give the governor more power in the constitution.

The stronger veto was also included because of the trouble the governor had during the 1869 legislative session. In an attempt to restrain the passage of private and special laws, Palmer had vetoed 72 of the almost 1200 private laws passed at the session, but the General Assembly repassed seventeen of these by the simple majority specified in the 1848 Constitution. Most of these could not have been repassed if a two-thirds majority had been required.

The convention's actions in giving the governor a stronger veto was in accord with the general trend in Illinois constitutional history towards increasing the power of the executive. Also in accordance with this trend, the restriction of the governor to one four-year term, which had been a part of Illinois constitutions since 1818, was removed after extensive debate.[40]

The chief members of the executive department, the lieutenant governor, secretary of state, auditor, treasurer, attorney general, and superintendent of public instruction, remained as elective officers, although at least one convention member objected to the inclusion of the superintendent of schools in this group, since "the qualification of that officer . . . depend on his education and upon his experience

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[37]Art. IV, sec. 13.

[38]Art. V, sec. 12, 16.

[39]1869-70 Debates, I, 153.

[40]Art. V, sec. 2; 1869-70 Debates, I, 760-74; II, 1371-73.

in the whole matter of schools and teaching." Perhaps specification of the election of the superintendent on a different date from that of other executive officers was an attempt to remove him from partisan politics.[41] The treasurer's term was limited to two years;[42] great suspicion was voiced during the convention debates about the temptations open to the treasurer, and therefore his term was restricted in this way. Salary restrictions imposed on executive officers in 1848, however, were removed in the 1870 Constitution.

The question of the judiciary sparked a dispute between Chicago and the rest of the state. While the entire state badly needed more and better-paid judges, Chicago's need was acute. The rapidly expanding population of the city had increased both the need for civil courts to settle disputes arising from numerous land sales, multiplication of grain elevators, and the growth of the Board of Trade, and the need for criminal courts, as robberies, thefts, and murder multiplied among Chicago's quarter million population.[43] Chicago's needs were so great in comparison to those of the rest of the state that special provisions were made for the city's judicial system, a move that was greatly resented by some downstaters; one, John Tincher, boasted that his own people in Vermilion County, "are a quiet, honest and industrious people, and do not require a judge for every forty thousand, as they do in those cities where there are people who propose to live off of each other, by just peeling each other every time they pass upon the street."[44] Others opposed this plan also, not because of special antagonism towards the city of Chicago, but because they disliked the principle of discriminating between localities in the constitution. Nevertheless, the realities of Chicago's judicial problems could not be denied, and the city was granted special criminal and superior courts, with one judge for every 50,000 people, while the rest of the state was divided into circuit courts, with one court for every 100,000 population.[45]

The number of Supreme Court judges was increased from three to seven, to be chosen from seven areas of the state, and to serve nine-year terms. All judges, Supreme Court, circuit court, probate, if such courts were established, and county judges, were to be popularly elected.[46]

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[41] Ibid., I, 764.

[42] The treasurer's term was expanded to four years in 1954.

[43] Bogart and Thompson, p. 22.

[44] 1869-70 Debates, II, 1117.

[45] Art. VI, sec. 13, 23.

[46] Art. VI, sec. 6, 13, 18, 20.

The question of suffrage, a subject for dispute in all Illinois constitutional conventions, was especially acute at this time. The committee on suffrage offered to the convention one majority and two minority reports. The majority recommended the provision which was eventually adopted, that the franchise be given to "every male citizen of the United States above the age of twenty-one years, who shall have resided in the state one year."[47] The two minority reports wanted to submit their propositions to the voters. Elijah M. Haines of Lake County led a group of four of the nine members of the committee who wanted to ask the voters to approve or disapprove woman suffrage, and if it was approved at the polls, to strike out the word "male" in the first section of the suffrage article. Although some insisted that the ladies' "domestic cares and present field of action is broad enough and large enough to engage their whole time and attention, and we cannot afford to spare them from its sacred and solemn duties" for such a task as voting, the proposition received serious consideration from the convention members. In fact, in April, the members voted 40-21 to submit the question of woman suffrage to the voters along with the constitution.[48] However, in May, and perhaps as a result of antagonizing lectures by suffrage leaders who allegedly advanced the theory that "men are out of their places in legislative halls, and on the judicial bench--that these places should be wholly given to women, and the men go to the fields and workshops,"[49] the convention members changed their minds, and struck the woman suffrage proposition out of the proposed constitution schedule.[50]

Attempts were again made by some to give the franchise to all male "inhabitants" of the state, and not to restrict it to citizens. All male inhabitants had been allowed to vote in Illinois until the 1848 Constitution had imposed a citizenship requirement, and the rejected 1862 constitution would have removed this qualification. In the debate over this question, John Dement and Joseph Medill led the majority in feeling that the foreign-born should not be given one of

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[47]The franchise was also given to those who were electors in 1848, since until that year aliens had been able to vote. This continued a provision in the 1848 Constitution. 1869-70 Debates, I, 856.

[48]Ibid., p. 1309.

[49]Mrs. Willard, as quoted by L. D. Whiting, who was sympathetic to the woman suffrage cause, and was pleading with the members not to let suffrage leaders' speeches prejudice them against extending suffrage to women. 1869-70 Debates, p. 1726.

[50]The vote was close--33-28, with 22 absent or not voting. Votes on woman suffrage followed no particular political or sectional pattern, except that the proposal was consistently opposed by the Cook County delegation. Ibid.

the major privileges of citizenship "without imposing any of the corresponding liabilities or duties upon them," and that this action would take away the inducement for them to become naturalized citizens. Medill further doubted that any state or nation had the right to extend voting privileges to any one who still held allegiance to a foreign power. Those supporting the extension of the franchise to all inhabitants praised the intelligence of most foreign-born immigrants, and many called it an inconsistency to grant the franchise to Negroes and not to foreign-born whites.[51]

As had been expected, some convention delegates attempted to counteract the effects of the Fifteenth Amendment to the U. S. Constitution, just then taking effect as of March 30, 1870. The second minority report to the suffrage committee, submitted by three southern Illinois committee members, recommended submitting to the voters the question of whether or not the word "white" should remain in the suffrage article, as it had in previous constitutions. While some advocated this public referendum, and supported "a white man's vote for a white man's government,"[52] federal action had to a large extent resolved this issue, and the convention members were not inclined to renew old bitterness and differences on racial issues, as had occurred in 1847.[53] Less discussion was held on this issue than on that of woman suffrage, and most convention members agreed with Joseph Medill that the state constitution now had "nothing to do with the right of the colored man to vote;" that it was "not in the power of this convention to take it away from him."[54] More discussion on the Negro's place in Illinois occurred when restrictions on Negroes serving in the militia were removed. Several motions which would have specified segregation of colored from white troops were voted down.[55]

Public education was considered for the second time in Illinois constitutions in the 1870 document, as Article VIII followed the rejected 1862 convention's instructions to the General Assembly to "provide a thorough and efficient system of free schools, whereby all children of this State may receive a good common school education." By 1870 education was an important and controversial subject in Illinois; the total sums spent on education the year before in the state amounted to over $7 million--more than the entire revenue of the state government.[56]

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[51] Ibid., II, 1285-93.

[52] Statement by O. H. Wright. Wright also did not propose to give the vote to "those pig-tailed fellows." Ibid., II, 1291.

[53] A resolution to commend the legislature's ratification of the Fifteenth Amendment carried by a straight party vote, 38 Republicans for, 36 Democrats against. 1869-70 Debates, I, 165-66.

[54] Ibid., II, 1290.

[55] Ibid., I, 862-66.

[56] Ibid., I, 767.

Therefore, the subject of education initiated several heated debates. Sectional interests were involved in the reluctance of members from northern counties, whose proportion of taxable property was greater than their proportion of school children, to appropriate funds for education from across the entire state and apportion them among the counties according to school population. However, Allen of Crawford County and other southern members argued convincingly that "the well-being of the children was the concern of the state rather than of individual counties," and this larger aspect was the decisive factor in formulating the decision of the members.[57]

Another controversy arose when a section was offered to the education article providing that "no teacher, state, county, township or district school officer shall ever be interested in the sale, proceeds or profits of any book, apparatus or furniture, used or to be used, in any school in this State." Some delegates pointed out that this was class legislation against teachers--"a humble class, but a very worthy one," according to Elliott Anthony, and that it would prevent teachers from writing textbooks for use in the schools, but the measure was eventually included in the constitutions.[58]

The line between church and state was clearly drawn, as Section 3 of Article VIII prohibited any use of public funds in aid of church or sectarian schools, although it was pointed out in debate that thousands of children were attending parochial schools in Chicago, while their parents were being taxed for the support of public schools.[59] A great deal of impassioned discussion took place concerning a proposal to permit Bible reading in the public schools. James G. Bayne of Woodford introduced a section instructing the General Assembly to "effectually prevent school officers . . . from excluding the Bible from said schools." Bayne supported his proposal by declaring that the Bible "is the only book now extant in the world by which man can have any definite idea of his origin or his creation." Bayne was opposed, however, by William H. Snyder of St. Clair who described the imposition this would be on the Catholics in the state:

> Has it ever struck our protestant fellow-citizens, who are the authors of this movement, what the consequences would be, if their position and that of our Catholic countrymen were reversed, and if Douay instead of the King James version of the Bible, were sought to be enforced by law upon the public schools of this state--if their hard-earned means were wrested from them by the tax-gatherer in order that the doctrines of a hostile church and what they consider the most pernicious of errors were about to be impressed forever upon the young tender minds of their darling children?[60]

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[57] Bogart and Thompson, p. 26.

[58] Art. VIII, sec. 4; 1869-70 Debates, II, 1732-35.

[59] Ibid., I, 617-27.

[60] Ibid., II, 1739-43.

W. H. Underwood, though he agreed on the great merits of the Bible, felt that it had no place in the schools:

> The wise man has said that there is a time and a season for all things. And there is a place for all things. Where is the proper place to inculcate the lessons of the Bible? Unquestionably in the family, in the Sabbath school, in the church and in the theological seminary. Is the common school the place to inculcate the doctrine of the Bible? No, sir.

Joseph Medill pointed out that neither the federal Constitution nor the constitution of any of the other states carried such a provision,[61] and the education article was completed with no reference to the use of the Bible in the public schools.

Another controversy arose when James M. Washburn introduced a resolution which would have submitted to a public vote the question of providing separate schools for white and colored children, and stated "that it is impolitic and unjust to appropriate any part of the taxes paid by the colored people of this State to the education of white children of the State and that it is equally impolitic and unjust to appropriate any part of the taxes paid by the white people of the State to the education of the colored people of the State." Washburn's resolution was tabled the next day and the convention took no further action on school segregation.[62]

The revenue article of the 1870 Constitution in general reaffirmed the provision for "levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her, or its property." This establishment of a property tax was part of each Illinois constitution, and was conceived at the time to be the most fair and equitable tax, although the industrialization of Illinois by 1870, and the subsequent increase in intangible property, must have been apparent.[63] The convention did make some changes in the revenue article; the two mill tax and the permit for a poll tax were removed, the list of objects which could be specially taxed by the legislature was greatly increased, and limits were placed upon tax rates for county purposes and upon local indebtedness.[64]

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[61] Ibid., II, 1751, 1758.

[62] The vote to table the resolution passed 42-27, with 16 not voting. All of those voting against tabling were Democrats, most from southern Illinois. Ibid., I, 679, 703.

[63] The general property tax continued to be the backbone of state and local finance; during the decade after the constitution was adopted about 90 per cent of state taxes were derived from the general property tax. Bogart and Thompson, pp. 310-11.

[64] Art. IX, sec. 1, 12.

Article XI on corporations contained some of the most significant provisions in the constitution. The misdeeds of the legislature concerning banks needed immediate attention. In the 1867 session of the General Assembly, the legislature had organized 25 banking institutions by special charter, two loan and trust companies, and 72 insurance companies which were permitted to borrow and loan money. During the following session in 1869, charters were granted by private laws to 67 banks, 14 loan and trust companies, and 56 insurance companies. No provisions were made in the charters for reports by the corporations to any state officer, or any other means for inspection of these and already-existing financial institutions.[65] These abuses were to be corrected by restrictions in Article IV on the legislature, and by Section 1 of Article XI, which stated that "no corporation shall be created by special laws, or its charter extended, changed, or amended, except those for charitable, educational, penal or reformatory purposes." Other provisions of the corporation article showed that, as in 1862, there was very little enthusiasm for state banks. Section 5 stated that "no State Bank shall hereafter be created, nor shall the State own or be liable for any stock in any corporation or joint stock company or association for banking purposes now created, or to be hereafter created. . . ." While this and other provisions were hostile and restrictive to state banks, they did not go so far as to abrogate existing bank charters or to forever prohibit notes and paper money in the state, as the 1862 constitution would have.[66]

In writing Article XI on corporations the convention members broke new ground in defining the relationships between a state and businesses operating within a state, particularly in the case of railroads. During the first weeks of the convention, most of the delegates, while deploring the excessive and discriminatory rates charged by some of the railroad lines, felt that the state had no remedy for this situation except more competition, as explained by Robert P. Hanna:

> Build competing lines, hold out liberal inducements for capitalists to come from every portion of the country and invest their capital and compete with them. When you have done this, the problem is solved and the true and only relief furnished.[67]

Joseph Medill agreed; while he admitted that "it is easy for gentlemen in their wrath to declare that railroad extortion must be stopped by law . . . I am not able . . . to conceive of any adequate and sufficient means of checking railroad covercharges and rapacity, by statute law of this State."[68] However, the convention continued to be beseeched

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[65]Bogart and Thompson, pp. 267-68.

[66]Very few state banks were in operation at this time; many had failed during the Civil War. Ibid., pp. 266-70.

[67]1869-70 Debates, I, 577.

[68]Ibid., I, 325.

by Grangers and other farm groups to take action of some sort, and the convention's thinking on this point began to change. In the last month of its work, Reuben Benjamin, the respected authority on constitutional law from Bloomington, presented a carefully reasoned argument, well documented with court decisions, to the effect that the lawmaking body indeed had the right to regulate railroad rates. Since railroad corporations had been created for the public good, and had been given the power of public domain, they were under the control of the legislature. Furthermore, the rights of private corporations ought not and could not stand in the way of public rights; "there are and can be no vested rights of governmental power in any individual or corporation, except those conferred by the Constitution." Immediately after Mr. Benjamin's speech, Lewis Ross of Lewistown offered an amendment to the section on corporations giving the General Assembly the power to regulate rates.[69]

After a technical debate on the legal ramifications of this action, the convention members adopted several sections of Article XI which carried out this principle. Section 12 declared that railroads are "public highways, and shall be free to all persons," and that the "General Assembly shall, from time to time, pass laws establishing reasonable maximum rates of charges for the transportation of passengers and freight on the different railroads in this State." Section 15 instructed the General Assembly to pass laws "to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in the state;" the enforcement of such laws could go as far as "forfeiture of their property and franchises."[70] The sections and five others in Article XI were submitted separately to the voters.

The actions of the convention with regard to state power to control railroads had important consequences for the whole country, as well as for Illinois. Railroad regulation fulfilled one of the main aims of the Granger movement of the 1860's and 1870's, and Article XIII of the 1870 Constitution, which estabished regulation and inspection of warehouses, fulfilled another. The 1871 session of the General Assembly promptly carried out the constitution's provisions on these two subjects by establishing a mandatory Railroad and Warehouse Commission to regulate and fix maximum rates. The railroads fought these laws through the courts until the U. S. Supreme Court ruled in Munn v. Illinois, 1877, that the state indeed had the power to regulate business affected with the public interest. The doctrine laid down in Munn v. Illinois is considered one of the most important principles in American constitutional interpretation.[71]

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[69] Ibid., II, 1641-43.

[70] Section 12 was approved by the convention by a 46-14 vote, while sec. 15 carried 32-27, with others not voting. Democrats were more strongly in favor of railroad regulation than Republicans; 21 Democrats and 11 Republicans voted for sec. 15, and 23 Republicans and 4 Democrats voted against it. Ibid., II, 1722.

[71] Henry S. Commager, ed., Documents of American History (7th ed.; New York, 1962), I, 541.

Another railroad measure included in the 1870 Constitution concerned the Illinois Central Railroad, which had been paying 7 per cent of its receipts into the state treasury in return for exemption from other taxes. While some convention delegates wished this exemption to be removed and the Illinois Central to be put on the same taxing basis as other railroads so that counties along the line could get benefits from its tax-exempt land and improvements, the majority wished to keep the system as it was. To insure that it could not be changed later, the convention adopted a provision similar to that contained in the rejected 1862 constitution, which stated, "no contract, obligation or liability whatever of the Illinois Central Railroad company to pay any money into the State treasury . . . shall ever be released, suspended, modified, altered, remitted, or in any manner diminished or impaired by legislation or other authority."[72] This provision, like the others on railroads, was to be submitted separately to the voters.

Also submitted separately was a provision that "no county, city, town, township, or other municipality, shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of, such corporation . . ."[73] Previously, many local areas had bankrupted themselves or gone deeply into debt to attract a railroad line to their area; this provision was intended to prevent any more of these unfortunate ventures. Section 24 of the schedule, however, stipulated that "nothing contained in this Constitution shall be so construed as to deprive the General Assembly of power to authorize the city of Quincy to create any indebtedness for railroad or municipal purposes for which the people of said city have voted. . . ." In the autumn of 1869 the citizens of Quincy had elected to subscribe to a railroad to be built across the river in Missouri, and construction had already begun, so the convention enacted this provision as a courtesy to Quincy and to its convention representative, the distinguished Orville H. Browning.[74]

Another provision felt to be important and controversial enough to be submitted separately to the voters concerned the Illinois-Michigan Canal. This issue, one of the first to be considered by the convention, aroused bitter Chicago-downstate antagonism.[75] Downstaters felt that the Canal, which had opened for navigation in 1848 and which had been the only successful project of the state's internal improvement system, was being run by the state purely for the benefit of Chicago, and many wished to give the state permission to sell or lease it if desired. Their opponents instead wanted to enlarge and improve the Canal as a means of providing competition for high railroad

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[72]"Sections Separately Submitted," 1870 Constitution.

[73]Ibid.

[74]1869-70 Debates, II, 1762-63.

[75]Bogart and Thompson, p. 11.

rates.[76] Finally, Mr. Browning presented an approved compromise which provided that the Canal could never be sold or leased without the legislature's first submitting the question to the voters at a general election and receiving majority approval for the action.[77]

Section 1 of Article XIV on amendments, regarding future conventions, was described in the convention president's address to the people of the state. He said that "to save all controversy in a future Convention to amend the Constitution, we have fixed the qualification of its members; the oath of office they shall take; the manner of filling vacancies; and provided that amendments proposed by such Convention, before they take effect, shall be ratified by the electors of the State."[78] This section, unfortunately, did not avoid future convention controversies; the provisions for qualifications of members to be "the same as that of members of the Senate" aroused much uncertainty in 1920. In 1870, though, greatest attention was paid to those matters which had proved troublesome to the current convention, namely, the number and replacement of delegates and the matter of the oath.

During the convention four delegates died and one resigned. Since no guidelines from 1848 had been established, and the members were not willing to accept the precedent of the much shorter 1818 convention that there was not enough time to elect replacements, the members decided after a long debate that the convention had the power to order special elections for substitute members, and three of these elections were held during the convention.[79] To avoid a similar situation in any future convention, Article XIV stated that "vacancies occurring shall be filled in the same manner provided for filling vacancies in the General Assembly."

The first big controversy of the convention, as stated above, had been the question of the oath to be taken by delegates. Therefore, Article XIV explicitly stated that "before proceeding the members shall take an oath to support the Constitution of the United States, and of the State of Illinois, and to faithfully discharge their duties as members of the Convention." Many members still disputed this decision, but a majority felt the question should be decided in advance for future conventions.[80]

Another debate occurred over the proper number of convention delegates to be fixed in the future. The House of Representatives was to be enlarged under the terms of the new legislative article, and many

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[76] 1869-70 Debates, I, 310-20.

[77] Ibid., I, 478. The Canal was operated by the state until 1882, when the people voted to cede it to the national government as part of a lakes-to-the-gulf waterway. Bogart and Thompson, p. 347.

[78] 1869-70 Debates, II, 1864.

[79] 1869-70 Debates, I, 197-208.

[80] 1869-70 Debates, II, 1312.

felt that continued election of convention members in the same number as those in the House would have produced too large a convention body. The members finally decided to accept Mr. Medill's proposal to elect two members from each senatorial district, so that a future convention body would consist of 102 members.[81]

One of the aims of the 1870 convention had been to make alteration of the Illinois constitution easier, but the delegates' hesitancy and seeming distrust of future legislatures led them to make the provision for future amendments to the constitution more restrictive than necessary. The process of amending the constitution was intended to be much easier than the corresponding method in the 1848 Constitution, which was so detailed and time-consuming that no changes, as badly as they were needed, had been adopted under its amending process. In the 1870 Constitution, amendments could be proposed in either house of the General Assembly, and, if approved by two-thirds of all members elected to each of the two houses, would be submitted to the voters at the next general election, where they would be adopted if approved by "a majority of all the electors voting at said election." This provision for a majority of all those voting was not restrictive at a time when the parties printed their own ballots and would simply include a constitutional question on the ballot, where the voter would automatically follow his party's decision to vote for or against the amendment unless he took the trouble to scratch out the provision.[82]

However, the next restrictive clause was warmly debated by convention members. It stated that "the General Assembly shall have no power to propose amendments to more than one article of this Consitution at the same session, nor to the same article oftener than once in four years." Several members strongly opposed these restrictions. John Dement, who had by this time seen three conventions and favored an easier way of changing the constitution, argued for permission to allow at least two articles to be amended at one session and accused others of lack of faith in future voters, stating that "I do not feel so distrustful of the people, as to be afraid that, if the General Assembly should submit amendments to two articles at one session, and either of them, or both of them, should be objectionable, they would not have judgment enough to reject one or both of them, as the necessity might require." Dement was upheld in this view, among others, by Joseph Medill, Lewis Ross, and L. D. Whiting, who enumerated all the states whose constitutions contained no such restrictions on the number of amendments, nor a four-year interval between amendments to one article.[83] However, the majority evidently went along

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[81] Ibid., II, 1594. Under the amendment to the legislative article approved in the November, 1955, general election, the number of Senate districts was increased to 58. Thus, subsequent constitutional conventions would consist of 116 delegates.

[82] Legislative Reference Bureau, Constitutional Conventions in Illinois (Springfield, 1919), p. 34.

[83] 1869-70 Debates, II, 1315, 1595.

with a physician who feared that "we would have the Legislature, half of its time, perhaps, engaged in framing proposed amendments to the Constitution," George Wait of Geneseo predicted that if the legislature could propose two amendments to the constitution at one session, "the Legislature, in a very short time, could entirely demolish our Constitution, build up a new one on its ruins, and thus make our organic law as unstable as the desert sands." The attempt to allow two amendments at the same session failed by a vote of 24-21.[84]

The 1870 Constitution writers could not have foreseen, of course, the changes in voting procedure which made it so difficult after 1891 to get enough voters to even consider constitutional amendments, let alone approve them, or that the minority representation being introduced into the legislature would make a two-thirds vote for submitting an amendment extremely difficult to attain. Nevertheless, it is clear from the debate on the question of future amendments that the members of the 1869-70 convention, despite their condemnations of the 1848 members and their determination not to follow the same example, were not immune from feeling that the product of their work should be, if not immortalized, at least well-guarded from extensive change.[85] The provisions resulting from this attitude constitute one of the major failings of the 1870 Constitution in the decades after its adoption, and contributed to great difficulties in Illinois state government.

The schedule for the constitution provided for its submission to the electorate at a special election on the first Saturday in July, 1870. Besides the constitution itself, eight separate sections were submitted--the railroad sections of the article on corporations, the article on formation of counties, the article on supervision and inspection of warehouses, the question of requiring a three-fifths vote to remove a county seat, the Illinois Central Railroad section, minority representation, the section restricting municipal subscriptions to railroads or private corporations, and the section on the Illinois-Michigan Canal.

The constitution was signed by 79 members on May 13, and the convention adjourned the same day, five months after its work had begun.[86]

Voter Approval of the Constitution, 1870

During the seven-week period between adjournment of the convention and the special election, adoption of the proposed constitution

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[84] Ibid., II, 1316-18.

[85] See especially 1869-70 Debates, II, 1314-18, 1592-94.

[86] Ibid., II, 1870.

was endorsed by almost all influential government figures and the press. Governor Palmer wrote to a friend that he felt "no hesitation in saying that the interest of the people of the State demand the adoption of the proposed constitution," and that "if the good people of the State adopt the proposed constitution and fill the General Assembly with earnest, independent men, they may firmly expect the reign of law instead of the dominion of lobbyists and speculators in special privileges and in public taxation."[87]

The Chicago Tribune in an editorial stressed the bipartisan nature of the proposed document:

> Upon the whole, the new constitution is a great improvement upon the old. The single section prohibiting special legislation is of incalculable value, and ought to secure its ratification, even though it contained no other improvement upon the old. . . .
>
> There is not a single section or paragraph in the whole instrument of a partisan nature. There is no reason why a Republican would be more in favor of it than a Democrat, or a Democrat than a Republican. In this respect, the new constitution appeals to each man as a citizen and a taxpayer--as a member of a commonwealth that will live long after existing political parties are forgotten. We can see no reason, therefore, why it should not be cordially supported by men of all shades of political and religious belief.[88]

The Tribune claimed that "nearly the whole press of the State and the leading men of both parties, have pronounced in favor of the new constitution." The only opposition, it said, came from "professional bummers, lobbyists, and barnacles who oppose reform," from those who wished to build railroads financed by counties and towns, and from a few Democratic newspapers, such as the Quincy Herald, which were firmly opposed to Negro civil rights.[89]

Despite these few opponents, evidence shows that most public figures and newspaper editors agreed with the Illinois State Journal, which commented:

> No one, we are sure, can fail to observe how much better adapted to the present wants and necessities of the State the new Constitution is than the old. That such will be the judgment of the people upon the comparison, we most heartily trust and hope.[90]

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[87]Palmer to Jesse W. Fell, June 18, 1870. Fell Papers, Illinois Historical Survey.

[88]Chicago Tribune, May 13, 1870.

[89]The Herald asked the question, "Do you suppose a Radical legislature would establish separate schools for the Negroes, unless it was required by the constitution to do so?" Quincy Herald, as reprinted in the Chicago Tribune, June 23, 1870.

[90]Illinois State Journal, May 14, 1870.

The voters of Illinois also apparently agreed with this statement; the constitution was approved on July 2 by a large majority, 134,277 to 35,443.[91] The eight propositions submitted separately were also approved. Six of these were approved by greater margins than was the constitution proper, with the largest number of votes being cast for the section relating to the Illinois Central Railroad.

The section on minority representation aroused the most opposition and received the narrowest favorable margin of votes, 99,022 to 70,080. This section was opposed by a majority of voters in 40 Illinois counties, but was passed through large favorable votes in several northern counties, particularly Cook, which approved the minority representation proposal by a vote of 20,139 to 2,244.[92]

Main factors in the overwhelming approval of the new constitution were the desperate need for a constitutional change in the state and the bipartisanship of the convention and its work, which won for it the support of all the major segments of government and public opinion. For these reasons, even controversial proposals such as minority representation and state control over corporations and railroads were approved. The constitution went into effect on August 8, 1870.

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[91]An abstract of the vote on the constitution by counties is printed in the 1869-70 Debates, II, 1894-95. The voters in 83 counties favored the constitution while those in 19 counties in southern and western-central Illinois opposed it.

[92]Other counties giving strong approval to minority representation included Bureau, Christian, Kane, Knox, LaSalle, Macoupin, McLean, Whiteside, and Sangamon. Ibid.

VI

CONSTITUTIONAL REVISION: 1870-1945

Changing the Constitution, 1870-1916

During the twenty years following adoption of the Constitution of 1870, constitutional change by amendment was accomplished with relative ease, primarily because the use of the party ballot kept non-voting on amendments from becoming a serious impediment to obtaining the necessary majority of votes cast at the election.[1] From 1848 to 1891 each political party printed its own ballots and distributed them among the voters. The party committee or convention established the party's position on proposed amendments to the constitution. If the party favored the amendment, its ballots would include the phrase "For the proposed amendment of section ___ of Article ___ of the Constitution;" if the party opposed the amendment, the word "Against" would be substituted for the word "For." In either event, however, the voter was bound by the action of his party unless he took the trouble to scratch out the phrase as printed. Under this system adoption or rejection of proposed constitutional amendments was controlled largely by party conventions or committees, but a measure approved by both parties had no trouble getting the popular vote necessary for approval.[2] Under the party ballot system, it is quite possible for a vote on proposed constitutional amendments to approximate the total number of votes cast in the election. From 1871 to 1891, five amendments were proposed and all were approved. The average number of non-voters was only about 23 per cent.

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[1]The first amendment, passed in 1878, showed the new needs of the state by instructing the Assembly to pass laws regarding drainage ditches and other improvements which cut across the property of several owners. In 1880, an amendment prohibited county sheriffs or treasurers from succeeding themselves. An 1884 amendment gave the governor the power to veto items in appropriation bills without negating the entire bills. The fourth amendment, passed in 1886, prohibited the hiring of convict labor. In 1890, because of constitutional prohibitions against municipal indebtedness, the constitution was amended to allow Chicago to issue $5 million worth of bonds to finance the World's Columbian Exposition in 1893. Constitution of the State of Illinois and United States (Springfield, 1967), p. 10.

[2]Legislative Reference Bureau, Constitutional Conventions in Illinois, p. 34.

All this was changed in 1891 when the General Assembly passed an official ballot law instituting the Australian voting system. All propositions to be voted on were printed at the bottom of the official ballot with blank spaces for both favorable and unfavorable marks, but with no provision by which a straight party vote could count either for or against such propositions. The voter had to specifically mark each space or he failed to vote at all on that proposition, thereby counting his vote as a "no" vote on proposed constitutional amendments. Between 1892 and 1896 three amendments were submitted to the voters, including the first of the so-called "Gateway" amendments to liberalize the amending process. Each of these proposals was soundly defeated, primarily because an average of 78 per cent of the voters failed to mark their ballots on the question.[3]

In 1899, the state legislature attempted to heighten voter awareness of constitutional propositions on the ballot by providing for a separate or "little ballot." There was a subsequent decrease in the proportion of those who ignored the constitutional questions, but this was not usually sufficient to carry the issue.[4]

The amending process was also made difficult by the requirement that proposed amendments must pass both houses by a two-thirds majority of all elected members before they could be submitted to the voters. This was often difficult to achieve under cumulative voting, which guaranteed a permanently large minority in the House. In the first fifty years after the 1870 Constitution was adopted, only eleven constitutional amendments were submitted to the voters.[5]

As the difficulties of amending the constitution became apparent, there was renewed agitation for a constitutional convention. John Peter Altgeld was elected Governor of Illinois in the 1892 election in which the first Gateway Amendment was defeated. In his inaugural address of January 10, 1893, Altgeld discussed calling a constitutional convention to consider state problems which were constitutional in nature, particularly that of revenue:

> There is a widespread conviction that the present revenue system of our State results in the greatest inequalities and injustice in the matter of taxation. . . . Various measures in relation to it will no doubt be presented to your consideration, the most important of which is, perhaps,

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[3] This trend continued: from 1891 to 1950, only two of the fourteen amendments submitted to the voters were adopted by the required majority. Ten others were approved by large majorities of those voting on the question, but fell short of a majority of the total number of voters in the election. Constitution of the State of Illinois (1967), p. 10.

[4] Six proposals were submitted from 1899 to 1929 on the separate "little ballot." Of these, two amendments and a proposal to call a convention were approved. Ibid.; Illinois Legislative Council, Constitutional Revision in Illinois (1947), p. 12.

[5] Constitution of the State of Illinois (1967), p. 10.

> the question, whether any comprehensive change can be made without a revision of our constitution. In the past, our State has revised its constitution at intervals of thirty and twenty-two years.[6]

A joint resolution to submit the question of holding a constitutional convention to the people was adopted by the Senate in 1893. However, members of the House of Representatives rejected the resolution on the last day of the legislative session, by a vote of 74 to 48.[7] Six years later, a Cook County Republican senator introduced a similar resolution for a vote on calling a constitutional convention, but it never reached the floor of the Senate.[8]

The forces behind agitation for constitutional change at this time included the inadequate revenue system mentioned by Altgeld, and the continued growth of the city of Chicago. Chicago had passed the one million mark in population in 1890, and by 1900 had more than one and one-half million inhabitants, almost six times her population in 1870.[9] In 1901, two joint resolutions introduced in the General Assembly calling for constitutional convention referenda took recognizance of this change. Representative Edward C. Curtis, a Republican from Kankakee County, stated in his resolution that "the rapid increase in the wealth and population of our large cities . . . demand legislation which can not be secured under the present Constitution."[10] The second resolution, introduced by a Cook County representative, claimed that "the change in the situation of the city of Chicago makes legislation adapted to it alone imperative to the good government of that municipality, such legislation being inexpedient for cities of less population."[11] According to the Chicago Tribune, the Speaker of the House, Lawrence Y. Sherman, also favored a new constitution in order to give home rule to Chicago and to consolidate the numerous city, township, county, and special governmental units operating in Cook County.[12] However, neither resolution was adopted by the House.

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[6]Henry M. Christman, ed., The Mind and Spirit of John Henry Altgeld (Urbana, 1965), p. 62.

[7]Illinois House Journal (1893), pp. 1184-85.

[8]Illinois Senate Journal (1899), p. 44.

[9]U. S., Bureau of the Census, Fifteenth Census, I, 280.

[10]Illinois House Journal (1901), p. 110.

[11]Ibid., p. 257.

[12]Chicago Tribune, March 8, 1901.

The movement for a convention abated somewhat after an amendment giving Chicago a measure of home rule was approved by the voters in 1904.[13] The amendment, which gave the General Assembly power to "pass any law providing a scheme or charter of local municipal government" for Chicago achieved the mecessary majority of 678,393 favorable votes out of 1,089,458 votes cast in the election with strong support by Governor Yates, the Chicago press, and both political parties.[14]

However, the movement to call a convention soon resumed. Edward C. Curtis, now a state senator, became the leading legislative advocate for holding a fifth constitutional convention. In the 1909 session of the General Assembly, and in each succeeding regular session until 1917, Senator Curtis introduced a resolution for the submission of this question to the people. His 1909 resolution never reached the floor of the Senate, and in 1911, 1913, and 1915, his resolutions were approved in the Senate but failed to gain a two-thirds majority in the House.[15]

Various organizations and groups were also set up during this time to support the convention idea. In December of 1910, twenty Chicago civic organizations sent representatives to draw up a program for constitutional reform. This group proposed several constitutional amendments and endorsed the movement for a constitutional convention.[16] In 1913 the Citizens' Association of Chicago urged the submission of the question to a popular vote. In 1914 a Constitutional Convention League was organized, with a statewide board of directors and an advisory council and officers who were prominent in politics or interested in better government. In 1915 the Constitutional Convention League was replaced by a statewide Constitutional Convention Committee of the Citizens' Association of Chicago, and this Association bore much of the burden of the popular agitation until the adoption of the joint resolution by the 1917 General Assembly.[17]

Much of the pressure for constitutional change was generated by the continued growth of the state and its transformation from a rural agricultural to an urban industrial society. Illinois' population had nearly doubled between 1870 and 1900. By 1920 this total had increased by another 50 per cent. The urban trend also continued.

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[13] Constitution of the State of Illinois (1967), p. 10.

[14] Illinois Legislative Council, Constitutional Revision, p. 12.

[15] William Thompson, "Illinois Constitutions" (Unpublished Ph.D. dissertation, Department of History, University of Illinois, 1960), p. 232.

[16] Chicago Record-Herald, December 8, 1910.

[17] Orrin N. Carter, "Unofficial Steps in Connection with the Calling of the Constitutional Convention of 1920," in Delegates' Manual of the Fifth Constitutional Convention of the State of Illinois,1920, ed. by B. H. McCann (Springfield, 1920), p. 63.

In 1870, Cook County had accounted for 13 per cent of Illinois' population; by 1920, 47 per cent of all Illinoisans lived in Cook County.[18] This burgeoning population required expanded public services, especially in the courts, in sanitation, and transportation developments not easily foreseen in 1870.

Agitation for constitutional revision was also linked with the Progressive movement in the United States. The goals of the Progressives included efficiency and economy in government. One of the reform goals of the Citizens' Association and the Constitutional Convention League was the institution of the "short ballot," by which executive officers could be appointed by the governor instead of being popularly elected, thereby streamlining the executive department.[19] Another Progressive reform expected to be considered at a convention was the initiative and referendum, which had been indorsed by preference polls in 1902, 1904, and 1910, but which could not be implemented without a change in the constitution.[20]

Successful Convention Call, 1918

Efforts to call a convention intensified after the 1915 legislature again failed to adopt a convention call resolution. Both Republican and Democratic party platforms of September, 1916, called for a constitutional convention.[21] The Chicago city council in November of 1916 passed a resolution requesting the legislature to submit the question of a convention call to the voters. In November, Republican Frank O. Lowden was elected governor over Democratic incumbent, Edward Dunne.[22] Lowden's message to the General Assembly on January 8, 1917, included a strong plea for adoption of a convention call:

> The time has come for a new State Constitution. The constitutions framed since the Civil War, including our own, have not been limited to those things which properly constitute the fundamental law of the State; but have contained many matters which are properly the subject of legislation. Legislation always depends upon existing conditions, and conditions change. A constitution

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[18] U. S., Bureau of the Census, Fifteenth Census, I, 279-80.

[19] Citizens' Association of Chicago, Annual Report (1914), p. 4, cited in Thompson, p. 233.

[20] Earl T. Hanson, "The Chicago-Downstate Problem as shown by the Illinois Constitutional Convention of 1920-1922" (Unpublished Master's Thesis, University of Illinois, 1939), p. 67.

[21] Illinois Blue Book (1917-18), pp. 328, 332.

[22] In the same election a new revenue amendment which would have allowed classification of property for tax purposes was approved after an intensive campaign, but failed by 15,393 votes of achieving a majority of all those voting in the election.

> which seeks to legislate will inevitably be outgrown. This is our situation today. Therefore I strongly urge prompt adoption by the General Assembly of a resolution calling for a constitutional convention.[23]

Eight days later, Senator Curtis, for the fifth time, introduced a joint resolution which provided for a referendum on the question of calling a convention. It was adopted by the Senate January 24, and by the House, 77-30 on March 14, 1917.[24]

To promote a favorable vote on the convention question, the Citizens' Association of Chicago called for a conference of those desiring a convention. The Association's Constitutional Convention Advisory Committee chairman, George E. Cole, called a meeting for April 8, 1917, in Governor Lowden's office. Among the officers of this committee were Governor Lowden, as honorary chairman, Senator Curtis, Clarence Darrow, B. F. Harris of Champaign, and Charles F. Hurlburgh of Galesburg, members of the steering committee. Democratic supporters included ex-Governor Dunne and U. S. Senator J. Hamilton Lewis.[25] Those present asked Chief Justice of the Illinois Supreme Court Orrin N. Carter to act as chairman of a nonpartisan state organization to conduct a campaign to obtain a favorable vote at the November election. This organization was termed the Constitutional Convention Campaign Committee.

A steering committee and an executive committee representing all parts of the state were appointed and district chairmen for all congressional districts were chosen. The organization prepared and distributed educational material, including a pamphlet entitled Why Illinois Needs a New Constitution. It assured voters that a constitutional convention would not disrupt the existing system of government and law in the state:

> The assembling of a convention does not mean the discarding of the existing constitution. It means simply the making of changes necessary to continue the Constitution of 1870 as an effective instrument of government. The Constitution of 1870 is that of 1848 changed to meet new conditions that have arisen. A constitutional convention is desirable because numerous constitutional changes are necessary to meet new conditions.[26]

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[23]Lowden also included a plea for the short ballot, saying that "responsibility must be concentrated so that the people may know who is to blame if that responsibility is not met, but the short ballot is impossible under our present Constitution." Illinois House Journal (1917), pp. 66-67.

[24]Illinois Senate Journal (1917), p. 274; Illinois House Journal (1917), p. 358.

[25]"Four Constitutional Conventions of the State of Illinois," pp. 232-34.

[26]Constitutional Convention Campaign Committee of Illinois, Why Illinois Needs a New Constitution (Springfield, 1918).

Another argument used in the pamphlet and by proponents of a convention was the need for the "preparation for peace;" now that the World War was coming to an end, the liveliest kind of industrial, agricultural, and social development was expected, and the restrictions of a bygone period needed to be removed by the adoption of a new constitution, if the state would be ready to keep pace with the times.[27]

The following groups were listed as favoring a convention call:

Most of the state's leading newspapers
Illinois State Bar Association
Illinois State Bankers' Association
Illinois State Farmers' Institute
State meeting of Corn Growers' and Stockmens' Organization
Illinois Equal Suffrage Association
Citizens' Association of Chicago
The Civic Federation of Chicago
Chicago Association of Commerce[28]

With the support of these leading state groups and the organized campaign to promote a favorable vote, the question of calling a constitutional convention was approved by 562,012 votes, a majority of the 975,545 voting in the election on November 5, 1918.[29]

Election of Partisan Delegates, 1919

In 1919, the General Assembly passed an enabling act ordering a constitutional convention to assemble on January 6, 1920.[30] Following instructions given in the Constitution of 1870, two delegates were to be elected from each senatorial district, for a total of 102 delegates.[31] According to the 1870 Constitution, delegates were to be elected "in the same manner, at the same places, and in the same districts" as state senators. However, in 1870, senatorial candidates were chosen in party conventions, while in 1919 they were chosen in direct primaries.

The direct primary was a Progressive innovation which sought to give the public more choice in selecting its candidates, and to avoid the selection of candidates by party committees in smoke-filled rooms. The direct primary had been bitterly fought for in Illinois; the state Supreme Court had overturned primary acts in 1905, 1906, and 1908 before

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[27] Ibid.

[28] Ibid.

[29] 162,206 votes were cast against the convention call. Not one Illinois county returned a vote against calling a convention. Cook County was the area most in favor of calling a convention, producing a majority of 63,522.5 votes. McCann, Delegates' Manual, pp. 67, 68.

[30] The enabling legislation is found in McCann, Delegates' Manual, pp. 71-74.

[31] Ibid.

the primary system was accepted in 1910.[32] Therefore, it is not surprising that committees of distinguished lawyers set up by the Constitutional Convention Campaign Committee and the Citizens' Association expressed opinions that candidates for membership in the constitutional convention should first be nominated in direct primaries. On January 28, 1919, Attorney General Edward J. Brundage rendered his legal opinion that convention delegates had to be nominated in primary elections.[33] The enabling legislation of June, 1919, therefore, provided for primary election of nominees in September and the regular election of delegates on November 4, 1919.

Reliance on the direct primary inevitably introduced the element of partisanship into the process of delegate selection. While Socialist party candidates entered the primaries in 42 districts and were joined in the ensuing election by a handful of Labor party candidates,[34] delegate selection became primarily a concern of the Republican and Democratic parties. Furthermore, the primaries prevented any bipartisan delegations from being presented to the voters, as had been the case in 1848 and 1870.

The general election mirrored the trend in the country at that time towards the Republican party,[35] but to an extreme extent, as 85 Republicans and 17 Democratic delegates were elected. This was the most lopsided majority held by one party in any of Illinois' constitutional conventions, a ratio of better than five to one. Other constitutional conventions in Illinois had been successful in obtaining public approval for their work only when the party membership of the delegates had been almost evenly divided, and the resulting constitution had been a product of compromise between the two major parties. On the other hand, partisanship had been a major cause for the defeat of the 1862 constitution, and it was to prove injurious to the success of the proposed constitution of 1922.

Not only the Democratic party felt neglected at the 1920 convention; Cook County, after overwhelmingly approving the call for a convention, was severely underrepresented. The 1870 Constitution had instructed the General Assembly to reapportion the senatorial districts every ten years, but this provision was ignored after the 1910 census. Under the 1901 apportionment, Cook County was allotted 19 senatorial districts, or 38 convention delegates. Apportionment under actual

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[32]Pease, The Story of Illinois, p. 224.

[33]Peter A. Tomei, "How Not to Hold a Constitutional Convention," Chicago Bar Record, XLIX, No. 5 (February, 1968), p. 182.

[34]McCann, Delegates' Manual, pp. 79-89.

[35]In 1920 Illinois chose Republican Harding for President by a vote of almost three to one, 1,420,480 to 534,395. During the twenties Republicans were in almost complete political dominance of state offices. Pease, The Story of Illinois, pp. 240-41.

population figures in 1919 would have given it 48 convention delegates.[36] This disproportionate representation of rural and urban interests and many of the actions hostile to Chicago's interests that were subsequently taken, aroused opposition to the convention in the very area which had worked hardest for constitutional change.

Many delegates elected had previously held public office; others were prominent attorneys and businessmen active in civic and community affairs. Among the best-known delegates was Senator Curtis, now present at the culmination of his long efforts to call the convention.[37] The delegates also included nine former members of the General Assembly, eight former judges, and seven former city mayors, as well as various other former officeholders. As in other Illinois constitutional conventions, several delegates were members of the current General Assembly, including the speaker of the House, David E. Shanahan.[38]

The native origins of convention delegates showed some of the great population changes in the state in the fifty years since the last constitutional convention was held. While in 1870 only a small percentage of delegates were Illinois natives, in 1920, 68 of the 102 members were born in Illinois, showing that Illinois was no longer a frontier state nor a stopping point in the movement of the population from East to West. Of the other delegates, only eight came from the eastern or southern states; twelve were born in states bordering Illinois. The nine foreign-born delegates' origins gave an indication of the most recent immigrations to Chicago and to Illinois; while all the foreign-born delegates in 1870 were from the British Isles, the 1920-22 convention included natives of Italy, Bohemia, Norway, and Germany, as well as Ireland, Scotland, and Canada.[39]

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[36]Urban A. Lavery, "Status of the Illinois Constitutional Convention," Illinois Law Review, XVI (1921-22), p. 201.

[37]McCann, Delegates' Manual, p. 188. A profile of each delegate to the convention is found on pp. 150-250.

[38]Other General Assembly members included Senator Curtis, Senator Henry M. Dunlap of Savoy, Senator Morton D.Hull, and Representatives Wm. M. Scanlan and Wm. H. Cruden. The question had arisen of the legality of electing members of the General Assembly to the convention, in view of constitutional restrictions against holding concurrent lucrative state offices (Art. IV, sec. 3), and Attorney General Brundage had indeed ruled that convention members would have to "vacate" their seats in the Assembly. This ruling was disregarded by all but Senator Hull, who did resign his seat. During the 1920 election, four delegates were re-elected to the Assembly, and five additional convention members were elected to a second public office, two to the state Senate and three to the U. S. House of Representatives. None of these resigned from membership in the convention. McCann, Delegates' Manual, pp. 150-250; Tomei, p. 189.

[39]McCann, Delegates' Manual, pp. 150-250.

The occupational makeup of the delegation showed the continued trend towards dominance of the legal profession in constitution making. The number of lawyers had increased in each convention; now, in 1920, 56 members named law as their main occupation, and many others were trained in law.[40]

By occupation, the delegation was not representative of the State of Illinois; only seven delegates represented agricultural interests, there was only one union official and one union attorney, and no representative of the academic community. There were two Negro delegates. Eighty per cent of the total membership was accounted for by lawyers, businessmen, and doctors, giving a conservative appearance to the delegation which was accentuated by an average age of slightly over fifty-one years.[41] Despite the great effects of World War I on Illinois, only four convention members had served in the War; thirteen more had served the war effort in local and state civil defense.

The convention members were provided with background materials and data by the Legislative Reference Bureau, through an act passed by the General Assembly in June of 1919; the Bureau was allotted $10,000 and directed to "collect, classify and catalog such reports, books, periodicals, documents, digests, summaries of the law and constitutions of other states, and such other printed or written matter as may be of assistance to the delegates in the performance of their official duties."[42] To fulfill their instructions, the Bureau did the following:

1. Furnished the delegates with a copy of a collection of state constitutions in force at that time.
2. Published and distributed to the delegates a pamphlet which presented the texts of the Constitutions of 1818, 1848, and 1870, and the rejected constitution of 1862. Suggestions were gathered as to constitutional changes likely to be urged upon the convention.
3. Prepared an annotated edition of the Constitution of 1870. The results of judicial decisions bearing upon each section were summed up under that section.
4. Prepared a second edition of the pamphlet "Constitutional Conventions in Illinois" which had originally been issued in connection with the election of November, 1918. The pamphlet gave a brief historical account of constitutional development in Illinois, and a general survey of the main constitutional problems likely to present themselves to a convention.

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[40] Ibid., pp. 111-15.

[41] The youngest member was S. E. Pincus, 38; the oldest was ex-Governor Joseph Fifer, 79. Ibid., pp. 179, 200.

[42] Laws of Illinois (1919), p. 63.

5. Prepared fifteen bulletins in a numbered series which discussed the problems likely to come before the convention, and to give a general survey of the operation of governmental institutions under the Constitution of 1870. The bulletins impartially presented and analyzed the chief problems of the state and other states.[43]

The first four of these bulletins were distributed to delegates before the constitutional convention assembled. Complete sets of the bulletins, with a consolidated index, were distributed to the delegates immediately upon the assembling of the convention. The bulletins were later issued in a single bound volume, and a copy of this volume was sent to each delegate.[44]

Despite the valuable contribution of the Reference Bureau, its work had to be done in the six months before the convention began, and most of the materials were not given to the delegates until the eve of the convention, allowing them little time for its study. Nevertheless, the work of the Reference Bureau remains one of the lasting contributions of the 1920-22 convention.

Proceedings of the Fifth Constitutional Convention, 1920-22

The convention members assembled at the Hall of the House of Representatives in the capitol building in Springfield on January 6, 1920 where the convention was called to order by Governor Lowden. The Republican majority decided to organize the convention by caucus, and they met with Governor Lowden on the morning of January 6 to choose their officers. This was another ominous partisan note; only the 1862 convention members had organized the convention by caucus before it had even assembled, and its work had been rejected by the people. The 1848 and 1870 conventions had elected their officers through compromises between the two major parties.

The Republicans selected as president of the convention Charles E. Woodward of LaSalle County, Governor Lowden's close friend, and draftsman of the famed Civil Administrative Code of Illinois.[45] Woodward was elected unanimously in recognition of his outstanding ability and in the interests of harmony; however, the Republican's choice for secretary, Bert McCann, was opposed by the Democrats, who wished to organize the convention on a bipartisan basis as in 1870, with a Republican for president, a Democrat for secretary, and so on. In presenting the minority candidate, Franklin Dove of Shelby County made the following argument for bipartisan organization:

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[43] Legislative Reference Bureau, General Statement of Work of Legislative Reference Bureau (Springfield, 1919), pp. 5-7.

[44] W. F. Dodd, "Work of the Legislative Reference Bureau" in McCann, Delegates' Manual, p. 78.

[45] Ibid., p. 146.

> Deliberative bodies and especially a Constitutional Convention should be run and operated less along political lines than any other body. There may be some excuse, gentlemen, for a legislative body being conducted along party lines. They may have a definite program which they wish to enact into law, but the very purpose of a Constitutional Convention is to safeguard the rights of the minority from the enforced will of a majority.
>
> There is no better time than here and now to see to it that this Convention is not organized along party and political lines. I think I am safe in saying that I voice the sentiment of every delegate here that our principal duty is to formulate a document which will have the support of this State. To that end it is necessary that we have the confidence of all parties. The constitutional rights of a Democrat, A Republican, a Prohibitionist, a Socialist and a Progressive are all the same.[46]

Despite this argument, McCann was elected on a straight party vote, 82 to 17. The intent was clear; the constitutional convention was to operate on a party basis. Organization by party continued with committee assignments, with Democrats being given only three of the 25 committee chairmanships.[47]

The oath of office was given to the delegates without debate; in this case, the intention of the 1870 convention to avoid controversy by specifying the oath to be taken was successful.[48] A committee to establish rules and procedure was appointed and the convention adjourned for eight days to await the committee's report.[49]

The convention assembled again on January 14 and remained in session until July 7, when it recessed again until September 21. However, when it reconvened, the convention immediately recessed again until November 8, when it remained in session only one month, until December 8. By this time, the convention had spent almost a year on its work, or twice as long as any previous Illinois constitutional convention. However, this was only the beginning; from its adjournment on December 8, 1920, the convention remained recessed for fourteen months, until January 31, 1922. During its session in 1922, it again

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[46] Proceedings of the Constitutional Convention of the State of Illinois Convened January 6, 1920, Vol. I (Springfield, 1920), pp. 37-38. Hereafter to be referred to as Proceedings, 1920-22.

[47] McCann, Delegates' Manual, pp. 129-31.

[48] Proceedings, 1920-22, I, 41.

[49] This report has been criticized for some of its provisions, such as the lack of time limitations on debate, which contributed to both the acrimony of the convention and its extreme length. Another criticism came on committee assignments; although there were 102 members, each received several committee assignments, which seriously impeded committee work. McCann, Delegates' Manual, pp. 117-28; 131-38.

recessed for six-week periods in the spring of 1922 and in the summer of that year for two and one-half months. The convention finally adjourned on September 12, 1922, two years and nine months after it began its work.[50]

These continued delays were caused by several factors. The convention was poorly organized at the beginning. Sessions were held only two or three days per week, committees rarely met, and members spent most of their time at home. Summer vacations were demanded because of the heat. The convention had to recess for the legislative session in 1921; apparently no suggestion was made to move the convention site from the capitol building for the duration of the session. The convention, officially in session for almost three years, actually spent only 140 days in actual convention work.[51]

Convention delays were also the fault of the Committee on Phraseology and Style, which requested many of the recesses in order to draft what they felt would be a "noble Document." The Committee wanted to eliminate the vagueness, ambiguity, and archaic phraseology of the 1870 Constitution, to draft an instrument that could be read and understood by the ordinary rules of grammar and rhetoric, and to model it after the United States Constitution, which after 150 years still remained an object of pride and clarity.[52] To achieve this goal, the Committee on Phraseology spent the long fourteen-month adjournment completely revising the text of the constitution according to the convention's first draft, and asked for other shorter adjournments to complete its revision. Its purpose, while praiseworthy, had unfortunate practical results, including delay in finishing the work of the convention and the presentation to the people of a completely new and unfamiliar document.

Another reason for the long duration of the convention was that the delays themselves brought on more delays. The meager $2,000 salary provided for convention delegates had attracted men who thought of their work as a public service, but as the convention dragged on, most of them had to attend to their own livelihoods. Therefore, absenteeism became a serious problem at the convention, and business was usually conducted with barely a quorum present. Absenteeism was so common and so resented by those who did attend regularly that on April 25, 1922, a measure was passed to enforce attendance by having the absent delegates brought to the convention under physical custody of the sergeant-at-arms.[53] Of course, this procedure was never used, but attendance improved for the remaining two months of the convention. By this time, however, the public had lost interest and confidence in the convention.

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[50] Tomei, p. 189; Proceedings, 1920-22, V, 4878.

[51] Tomei, p. 186.

[52] Comment of Committee on Phraseology and Style on Second Revised Draft of the Constitution of Illinois (Springfield, 1922), p. 6.

[53] Proceedings, 1920-22, IV, 3735.

These were some of the obvious reasons for the delay in finishing the convention's work. An important underlying reason for the many recesses, however, was the bitter schism between Cook County and other Illinois delegates, prompting adjournments when neither side could agree or communicate with the other, especially on matters of legislative apportionment and the question of the initiative and referendum.

Voters choosing convention delegates in November of 1919 had also approved three referenda instructing the convention to act on proposals regarding provisions for the initiative, referendum, and recall, and one which would have authorized municipalities to acquire public utilities. These referenda included a provision for separate submission of the initiative and referendum sections to the people. The vote on this measure showed that Cook County voters approved the initiative and referendum and other Illinois voters disapproved.[54] The initiative and referendum issue, therefore, provoked dispute between Cook County delegates and other delegates, the latter fearing that the greater voting power of Cook County would give Chicago the final word on legislation under these reforms.

During committee hearings on this question supporters of the initiative and referendum included Duncan McDonald, president of the Illinois Federation of Labor, and ex-Governor Dunne, who named as strong opponents of the initiative and referendum, "the Chicago Tribune, the Daily News, Chicago Post, and most of the Republican papers in Illinois . . . [and] the Civic Federation and all the reactionary and capitalistic influence of the State." Agricultural interests testifying against the proposition included the secretary of the Illinois Agricultural Association, the editor of the Prairie Farmer, and the Dean of the University of Illinois College of Agriculture.[55]

On November 23, 1920, the convention voted not to include a provision for the initiative, referendum, and recall in the constitution.[56] The vote was so startling in view of the pre-convention referendum that Chicago delegate M. A. Michaelson immediately moved that the convention adjourn sine die, claiming that "this convention has failed in its purpose." Eight delegates voted with him in favor of adjournment.[57] The following day the Chicago Herald and Examiner wrote that "it is generally conceded in Springfield that when the convention buried the I and R it ended all hope for the new constitution, indelibly okayed by the interests."[58] After the initial uproar subsided,

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[54]Cook County tabulated 148,646 for the 76,267 against; other counties voted 108,994 to 133,081 against. Hanson, p. 78.

[55]Proceedings, 1920-22, I, 239-43, 714-81.

[56]The vote was 52-20. Ibid., III, 2522.

[57]Ibid.

[58]The Herald had been one of the foremost advocates of the I and R. Chicago Herald and Examiner, November 24, 1920.

the initiative and referendum controversy continued to plague the proceedings; it contributed in part to the convention's extended length and was apparently one of the factors that shaped the critical decision to submit the final document as a whole for popular approval. In an interview in 1939, H. I. Green, Champaign County attorney and convention delegate, claimed that one of the causes for the frequent adjournments was the insistent demand for its resurrection; adjournments were made partly for the purpose of letting this demand subside. Green also explained that since the referendum approved by the voters in November, 1919, would have provided for the separate submission of the I and R with the constitution, no separate submissions were made of controversial articles because, if such had been the case, the convention, in view of the vote cast in 1919, would almost of necessity have had to submit a proposal for the I and R separately also. Separate submission of other articles, while the I and R was ignored, would have been embarrassing, especially to those who intended to run again for public office.[59]

Seventy of the convention members met for the last time on September 12, 1922, where they completed their business, heard the address to the people written for publication with the constitution, and signed the document. The delegates authorized the printing of one million copies of the annotated constitution together with the address to the people, and the convention adjourned.

The Proposed Constitution of 1922

The proposed constitution differed sharply in language and organization from that of 1870; in fact, when the two constitutions were published together by the Bureau of Public Efficiency in order to note the differences between them, it was found impossible to print them side by side, and explanations and cross references had to be used to compare the two.[60] The proposed constitution of 1922 retained the preamble of other Illinois constitutions, but dropped the article on boundaries, reasoning that state boundaries were fixed by act of Congress and not determined by the state. The Bill of Rights contained most of the provisions of the 1870 Constitution, though it was extensively rewritten to remove archaic and surplus phrases. Section 5 would have permitted the waiving of a jury trial in all but capital cases, expanding this practice somewhat over that of the 1870 Constitution as interpreted by the courts. Section 5 also permitted women to serve as jurors for the first time.

The argument in the 1869-70 convention over Bible reading in the public schools was renewed in 1920. Many convention members wanted to include in the constitution express permission for Bible reading in the schools after recent State Supreme Court decisions had

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[59]Hanson, p. 82.

[60]Chicago Bureau of Public Efficiency, The Proposed New Constitution for Illinois (Chicago, 1922), pp. 7-8.

held that Article II, Section 3 of the 1870 Constitution, guaranteeing religious freedom, prohibited this.[61] The debate repeated arguments on both sides similar to those in the 1870 convention; in fact, statements of Joseph Medill, William H. Underwood, and others in the convention of 1870 on the same subject were quoted in the debate.[62] Organized opponents of Bible reading in the schools included Lutherans, Catholics and Jews. The Lutherans feared it would be an opening wedge towards greater control of religion by the state. Catholics and Jews believed the Bible used for reading would be the King James version, and would therefore be an imposition of alien beliefs upon their children. Proponents quoted Benjamin Franklin, Thomas Jefferson, Abraham Lincoln,and George Washington and appealed to their colleagues to "Keep God in American Government." The best-received speech, by Rodney H. Brandon of Kane County, concluded with the plea to "give children each day the chance to know the principle that every organized human effort should be begun by a recognition of man's dependence upon Diety."[63] The convention voted, 45 to 16, to include a phrase in the third section of the Bill of Rights providing that "the reading of selections from any version of the Old and New Testaments in the public schools without comment shall never be held to be in conflict with this constitution."[64]

Another addition to the Bill of Rights stated that "laws shall be applicable alike to all citizens without regard to race or color." Negro delegate Edward H. Morris fought vigorously for a strong guarantee of civil rights. He was supported by a majority of the convention members present, but many delegates indicated during debate that their sentiments had not progressed very far from 1862, when Illinois voters approved the denial of the rights of citizens to Negroes. Delegate Morris and his colleague, Reverend Archibald Carey, asserted pride in their race and pointed to black accomplishments during the Civil War, Spanish-American War, and World War I.[65] The attack against them and their position by some convention members centered almost exclusively on the question of racial intermarriage, an issue which the Negro delegates felt was irrelevant to the question of civil rights in the constitution:

> Mr. McEWEN (Cook). Do you think it would be a good thing for the people of this country if the races were permitted to intermingle and assemble?
>
> Mr. MORRIS (Cook). I think it would be a good thing for this country if we as lawmakers attended to our own business and let the individuals attend to theirs, along those lines.[66]

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[61] Legislatve Reference Bureau, Constitution of the State of Illinois, Annotated (Springfield, 1919), p. 29.

[62] Proceedings, 1920-22, IV, 3589, 3597. The entire debate is found on pp. 3566-611.

[63] Ibid., IV, 3604.

[64] Ibid., IV, 3611.

[65] Ibid., II, 1975-78; IV, 3700-702.

[66] Ibid., II, 1979.

Members continued to voice their fears about racial intermarriage, but the Reverend Mr. Carey delivered what many felt to be the final word on the subject of the purity of the races:

> If there came, sir, any mixture in my blood, it was due to crime on the part of the men of your race when my great grandmother was a slave, and helpless, and couldn't defend herself on her virtue. (Applause)[67]

The provision for equal administration of the law without regard to race or color passed, 58 to 5--but only after some members were assured by their colleagues that it would not interfere with the General Assembly's future right to pass laws forbidding intermarriage between races.[68]

The most bitter controversy in the legislative article--some felt in the whole constitution--was the question of reapportionment of the legislature. The General Assembly, seeing and fearing the disproportionate growth of Cook County over the growth of the rest of the state in recent decades, had refused to reapportion the legislature in 1911, as required by the constitution. Now, the convention, weighted by the old apportionment of 1901 heavily in favor of downstate representatives, sought to keep the downstate advantage in the legislature of the future. The majority report on the question, signed by downstate members of the Committee on the Legislative Department, provided for restriction of Cook County in both houses of the Assembly. Cook County would receive 19 of the 51 senatorial districts, and in the House of Representatives the county would be the unit of representation, with each county allotted one representative, plus one additional representative for each 50,000 inhabitants. After the first apportionment, no county could have its representation reduced if it lost population.[69] A minority report, signed by Cook County members of the committee, both Republicans and Democrats, placed no restrictions on the representation of Cook County in either house of the Assembly. A third report was submitted by a Democratic delegate, and complained that neither of the other two plans provided for cumulative voting.[70]

On June 17, 1920, the convention accepted in principle the majority report provisions. The state was to be divided into 57 senatorial districts, with Cook County containing 19 and other counties 38 districts. There were to be 153 representative districts, with no county allowed to have more than 76 representatives. Thus, Cook County representation was to be limited in both houses. This plan was adopted by a vote of 43-19, being opposed by 16 Cook County and three downstate delegates.[71]

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[67] Ibid., IV, 3700.

[68] Ibid., IV, 4059.

[69] Journal of the Constitutional Convention, 1920-1922, of the State of Illinois (Springfield, 1922), p. 199, hereafter cited as 1920-22 Journal.

[70] Ibid., pp. 200-01. Cumulative voting was not included in the final reapportionment plan adopted by the convention.

[71] Ibid., p. 210.

News of this apportionment plan created an uproar, and contributed greatly to the difficulties of the convention, as Chicago delegates refused to accept the majority decision, and downstate members refused to compromise. Finally, however, an agreement was worked out on February 7, 1922, in which Cook County would not be limited in representation in the House of Representatives, but would be limited to one-third of the Senate membership.[72] This compromise came too late for many Chicagoans, who had become prejudiced against the convention in the long months after its first apportionment decision. Others denounced the compromise and held out for true porportional representation in both houses.

The Chicago-downstate fight over representation continued in the judicial article. In the 1870 Constitution, Cook, Will, Lake, Kankakee, and DuPage counties had been designated as one of the seven Supreme Court districts, each of whom elected one justice. In the proposed constitution, the same districts were preserved, but the number of justices was to be increased to nine; the district including Cook County was to elect three judges, although only two of them could be elected from Cook.[73] Although this provision gave more judicial representation to the Cook County areas than had the 1870 Constitution, it still clearly underrepresented the most populous areas; the district including Cook, Will, Lake, Kankakee, and DuPage counties, containing a majority of the state's population, was permanently restricted to one-third of the Supreme Court positions.

Another controversial section of the judicial article would have given to the Supreme Court original jurisdiction over cases relating to revenue, in quo warranto, mandamus, habeus corpus, prohibition, and "other cases involving questions of great public importance," which to many meant extraordinary powers in the future. The Supreme Court was also given the power to "prescribe rules of pleading, practice and procedure in all courts," to appoint and remove appellate court judges, and assign circuit court justices and appoint their assistants.[74]

The article on suffrage, as in all Illinois constitution making, provoked some discussion and debate. Fifty years after woman suffrage failed in 1870, Illinois convention members seemingly accepted its inevitability; the only question in the convention was whether striking out the word "male" in the article would be a sufficient guarantee of the vote to women.[75]

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[72] Journal, pp. 491-93

[73] Proposed Constitution, Art. V, sec. 87, 88. This document is found in the Debates and Journal of the 1920-22 convention, and in The Proposed New Constitution of Illinois, 1922, with Explanatory Notes and Address to the People. References will hereafter be given by article and section only.

[74] Art. V, sec. 92, 93, 97, 109, 110.

[75] Proceedings, 1920-22, I, 967-77. The twentieth amendment to the U. S. Constitution went into effect on August 26, 1920, while the convention was in official session.

Negro suffrage was not debated again, except by implication. One delegate proposed withholding suffrage from those "who cannot read and write the English language." George F. Lohman of Cook County predicted that if this were included, it would lead to literacy tests and subsequent disenfranchisement of many Negro voters, as had similar provisions in other states. The provision was subsequently stricken from the suffrage article.[76]

It would have been impossible to please all of the major factions in the state with the constitution's revenue article, which included the following provisions:

1. The general tax by valuation on all classes of property, required under the 1870 Constitution, was also required by the proposed revenue article, with certain exceptions.
2. The legislature was authorized to provide a flat income tax on incomes from intangible personal property in place of the tax by valuation as required in the 1870 Constitution.
3. The legislature was permitted (not required) to levy a general tax on all net incomes. This tax, if levied, would be in addition to other taxes authorized, but in order to avoid double taxation, the General Assembly could permit deductions to compensate for other taxes paid on the property (or income therefrom) from which the income taxed under the general income tax provision could be graduated.[77]

The provision permitting an income tax was a controversial but courageous method of attacking the state's revenue problems; however, the convention members displayed a conservative business orientation and a fear of future public actions by the restrictions on an income tax which they wrote into the constitution. The income tax could be graduated, but the highest rate could never exceed three times the lowest rate. Exemptions could be granted to low-income families, but these exemptions could never exceed "one thousand dollars to the head of a family plus two hundred dollars for each dependent child under the age of sixteen years," or five hundred dollars for a single person.[78] The convention members evidently felt they could not trust future legislatures not to exceed these restrictions, and showed their concern for high-income groups and business interests by this action.

One of the major reasons Chicagoans had supported a constitutional convention was the need for greater home rule for the city. The local government article of the proposed constitution devoted sixteen sections to specifying home rule for Chicago, but one clause stated that "the

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[76] Ibid., I, 996-99.

[77] Chicago Bureau of Public Efficiency, Shall the Proposed New Constitution be Adopted? Vote Yes (Chicago, 1922), p. 12.

[78] Art. VII, sec. 143, 145.

city, however, may impose taxes and borrow money only as authorized by the general assembly or by this article."[79] The article did grant many revenue powers to the city, but they were greatly limited by this clause. Since revenue management is vital to city government, this qualification took away much of the gain in home rule for Chicago.

A later critic said of the 1920-22 convention that "it proceeded as if it were framing a constitution for an abstract Utopia of its own creation, instead of the state of Illinois with living people and rather concrete and easily ascertainable political opinions."[80] Nowhere was this harsh judgment more clearly upheld than in the provisions made in the convention for future amendments to the new document. Despite the trouble experienced in amending the 1870 Constitution and the extreme efforts required in obtaining enough votes to call a convention in 1920, the delegates ignored the opportunity to write a more flexible amending process into the proposed constitution. The new document retained the same requirements for calling a new convention, including the requirement that a convention call be approved by a majority of all those voting at an election. Despite controversies before the 1920 convention which had to be settled by rulings by the Attorney General, the provisions for choosing delegates to a convention were unchanged. As in 1920, the members would be chosen from Senate districts. Cook County, allotted one-third of these districts in the legislative article, was given seven extra convention seats, but would still have remained a minority in a future convention.[81]

Amendments still would have required a two-thirds vote by both houses of the General Assembly. The number of electors needed to approve amendments was reduced from a majority of all those voting in the election to a majority of those voting for members of the House of Representatives, but the General Assembly was limited in proposing amendments to not more than two articles of the constitution at the same session, "nor to the same section oftener than once in four years."[82]

Little debate was held on the subject of making the calling of a convention or the amending of the constitution easier to accomplish; evidently most of the convention members agreed with ex-Governor Fifer when he said that "we ought to make it [the constitution] so that it cannot be changed lightly and easily. We want it so secure that when we go home after our adjournment and the people adopt it, we can go about our usual vocations with the assurance that no great harm can come to us or the rest of our fellow citizens by hasty and inconsiderate legislation."[83]

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[79]Art. VIII, sec. 178.

[80]Henry P. Chandler, "Thoughts on Constitution-Making Suggested by the Experience of Illinois," University of Pennsylvania Law Review, 71 (1923), p. 122.

[81]Art. IX, sec. 232.

[82]Art. IX, sec. 233.

[83]Proceedings, 1920-22, V, 4381.

The schedule of the proposed constitution provided for its submission as a whole at a special election on Tuesday, December 12, 1922.[84] This decision dampened its chances of adoption. Many groups were opposed to certain provisions and might have supported the document if allowed to vote separately on controversial issues. As it was, opposing groups, while differing among themselves, were united in their opposition. Given the chance either to accept the constitution with objectionable provisions or to reject it, most chose to reject it.

Voter Rejection of the Constitution

In the three-month interval between the convention's adjournment and the special election, both proponents and opponents of the document organized public opinion campaigns. The convention itself published a pamphlet containing the text of the new constitution along with the address praising its strong points which had been written by the convention's Committee on Submission and Address. The voters were requested "not to approach [the document] with the mind to compare it with his ideal, for this is to condemn it in advance. . . . The real and only question presented to the people of Illinois is: Is this proposed new Constitution, framed by your representatives, better than the Constitution under which you now live?"[85] To assist the voter in answering this question, each section of the constitution was accompanied by notes which indicated the changes, if any, from that of the 1870 Constitution.

A state committee organized to promote adoption of the new constitution was headed by Chief State Supreme Court Justice Orrin N. Carter, with former Governor Lowden, former Governor Charles S. Deneen, U. S. Senator William B. McKinley, and former U. S. Senator Lawrence Y. Sherman as honorary vice presidents. Members of the committee from Cook County included leading railroad and utility lawyers, a circumstance which probably hurt the constitution's chances, since opponents of the constitution charged that it was written mainly for corporation interests.[86] County committees were organized to provide speakers and furnish literature promoting the advantages of the new constitution.[87] Also active in advocating the constitution's adoption was the Chicago Bureau of Public Efficiency, which prepared both a straightforward publication entitled The Proposed New Constitution for Illinois, containing the text of the proposed document and the text of the old with extensive explanatory comments and cross-references, and a more argumentative pamphlet entitled Shall the Proposed New Constitution be Adopted? Vote Yes.

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[84] Schedule, sec. 29. All Illinois' constitutions since 1818 have been submitted to the voters at special elections.

[85] The Proposed New Constitution of Illinois, with Explanatory Notes and Address to the People (Springfield, 1922), p. 6.

[86] Chicago Herald, November 18, 1922.

[87] Urbana Daily Courier, November 22, 1922. This and the following newspaper citations from clippings compiled by Jane Tufford, Illinois Historical Survey, Urbana.

Opposition also organized. The People's Protective League was formed on November 22, 1922, with Harold L. Ickes as president and former Governor Dunne and attorney Clarence Darrow among its members. The members of the League waged an active campaign, preparing and distributing pamphlets and making public statements and speeches against the adoption of the constitution.[88]

Various newspapers, civic organizations and political factions in the state began to take sides on the question. Chicago newspapers, which had vigorously advocated a convention four years before, were almost unanimously opposed to the convention's finished product. The Tribune stated editorially:

> Vote no on the question of adopting the proposed constitution. If it were accepted the people of this state would write into their fundamental law an unjust and un-American doctrine of inequality in political rights. This unjust doctrine would deprive Cook County of its full representation in the state senate and it would limit Chicago to two of the nine Supreme Court judges.[89]

The Daily Journal and the Herald and Examiner also opposed the constitution, while the Evening Post supported it.[90]

Springfield's two papers disagreed on the issue of adopting the constitution. The Republican State Journal supported it lukewarmly, saying that the new document "was superior to the present constitution, all things considered, and more responsive to the modern demands of the state and the needs of its people."[91] The Democratic State Register, on the other hand, opposed it because the new constitution "was framed subtly in the interest of special interests," and besides, it would raise taxes.[92] According to the Urbana Daily Courier, downstate newspapers on the whole showed a favorable attitude towards the constitution. Some of the newspapers supporting it, and the reasons given,as listed in the Courier, were as follows:

> Mt. Vernon Herald: Improvement in the taxing system.
> Mt. Carmel Republican-Register: Contains judicial reform.
> Cairo Citizen: Limitation of Chicago's representation in the Senate.
> Centralia Sentinel: Limitation of Chicago's representation, and abolition of minority representation.
> Sterling Gazette: Bars Chicago from ever controlling the legislature. No one county or city should rule the entire state.

Other downstate newspapers favoring adoption included: Olney Mail, Peoria Journal, Ottawa Republican Times, Galesburg Republican-Register,

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[88] Chicago Herald, November 24, 1922.

[89] Chicago Tribune, December 10, 1922.

[90] Chicago Evening Post, December 11, 1922.

[91] Illinois State Journal, December 12, 1922.

[92] Illinois State Register, December 11, 1922.

Kewanee Star-Courier, Peoria Transcript, Murphysboro Republican Leader, and the Jacksonville Courier. Those opposed to adoption included the Belleville News Democrat, Decatur Review, Pana Palladium, Taylorville Courier, Paris News, and Litchfield Union.[93]

Political opposition to the proposed constitution grew. The Democratic central committee of Cook County went on record as opposing the constitution by a vote of 43-3, while Anton J. Cermak, Democratic president of the Cook County Board of Commissioners, urged the voters to "snow it under." Republicans were split on the issue; the Republican party in Illinois had been bitterly divided into two factions since 1918, one led by former Governor Lowden and the other by present Governor Len Small and Chicago Mayor William (Big Bill) Thompson. Lowden had supported the convention's efforts from the beginning; Thompson and Small now opposed it. Small especially criticized the revenue article, arguing that "instead of equalizing taxation, the revenue sections of the document offered the voters are so framed as to relieve and favor the very rich and impose unequal and burdensome taxation upon the poor man, the wage-earner and the person of moderate means." The governor also criticized the submission of the document as a whole instead of by sections.[94]

Although the Illinois State Federation of Labor opposed the constitution through fear of a "judicial dictatorship," judges themselves were divided on its merits. The Supreme Court split; three of the seven judges opposed the constitution because it would give the Court undesirable powers and drag the Supreme Court into politics. Twenty-five judges of the circuit and superior courts of Cook County signed a "round robin" which urged the defeat of the proposed basic law. Opponents' claims that the document was a lawyer's and not a people's constitution were reinforced by its support from the legal profession. The Illinois Law Review asked for the opinions of 29 prominent attorneys throughout Illinois, and 27 favored adoption of the constitution, as did the Chicago Bar Association.[95]

Chicago members of the Illinois State Teachers' Association adopted resolutions condemning the work of the convention, the executive committee of the World's War Veterans denounced the proposed document by calling it "the most reactionary measure ever attempted to be foisted on a free and independent people," and the Rotary Club, at first expected to endorse the new constitution, decided not to take an official stand.[96]

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[93]Urbana Daily Courier, December 11, 1922.

[94]Chicago Tribune, December 10, 11, 1922.

[95]Ibid., December 11; Chicago Herald, November 3, 11; Chicago Evening Post, November 25, 1922, cited in Thompson, pp. 272-73.

[96]Chicago Herald, November 19, 21, 22, 1922.

Both opponents and proponents of the proposed constitution increased their efforts immediately before the Tuesday, December 12 election. Meetings were held on Sunday and Monday nights to press home arguments and to get out the vote. The state committee for the constitution mailed last-minute literature to reach voters by Monday morning, the day before the election, to urge a vote for the proposed document. Also in Chicago's mail deliveries Monday morning were 800,000 copies of resolutions adopted by Mayor Thompson's City Council urging rejection of the constitution.

The vote on the issue on Decmeber 12, 1922, was extremely heavy, totaling over a million votes. The constitution was emphatically rejected, 921,398 votes against and 185,298 for.[97] Voters outside Cook County rejected the constitution by more than two to one, while Cook County returned a negative vote of nearly twenty to one.[98] The Chicago Herald and Examiner said, "There is no record in the history of American politics that equals this for an uprising of the people at the ballot box on a local issue." The New York Times reported that "the majority is incredible."[99]

The blame for the crushing rejection of the proposed 1922 constitution has been laid to many factors, primarily the partisanship of the convention, the submission of the document as a whole, the loss of popular interest because of the length of the convention, the attempt to rewrite the entire constitution, and the lack of liberal amending procedures. The support of almost every major faction and group in the state was necessary to approve constitutions in 1848 and 1870. On the other hand, the 1862 constitution was rejected mainly because the convention had alienated a major group--the Republican party. The 1920-22 convention members managed not only to alienate some Republican party members, but also most of the Democrats, labor unions, teachers, judges, and many other groups in the state, including most Cook County residents. The convention of 1920-22, however, did perform several services: the background work prepared by the Legislative Reference Bureau remains, and a study of the 1920-22 convention can be utilized and applied to similar efforts in the future as an example of "how not to hold a constitutional convention."[100]

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[97] Illinois Blue Book, 1923-24, p. 791.

[98] The Cook County vote was 27,874 for and 541,206 against; outside Cook the vote was 157,424 for and 380,192 against. Ibid.

[99] December 13, 1922.

[100] With this purpose in mind, an article with this title on the subject of the 1920-22 convention was written by Peter Tomei, op. cit. in the spring of 1968, before submission of another convention referendum to the voters in November of the same year.

Convention Referendum in 1934

After the convention method of changing the 1870 Constitution failed in 1922, another attempt was made to change the constitution through the amendment process. However, as before, the requirement of a favorable vote by a majority of those voting at an election thwarted this effort. Gateway amendments failed in 1924 and 1932, and revenue amendments failed in 1926 and 1930. All but one of these produced a strong favorable majority of those voting on the question, but 40 per cent or more of Illinois voters otherwise voting in the election ignored the amendment propositions. In 1929, Governor Louis Emmerson supported the movement, adopted by the legislature, to return amendment questions back to their original place on the left side of the official ballot, feeling that the "little ballot" experiment had proven unsuccessful.[101] However, results were even worse under this experiment; while at least 70 per cent of Illinois voters had participated in voting for four out of six amendment questions when they were on the "little ballot," in none of the consitutitional proposals submitted from 1930 to 1950 did as many as half of the voters bother to mark that particular question on their ballot.[102]

Therefore, after the Gateway proposal in 1932 received over 1,000,000 votes but failed to obtain a constitutional majority by a 650,000 margin, new efforts were made to call a constitutional convention. The question was submitted to the voters at the general election November 6, 1934.

To assist in gathering support for this convention call, the Legislative Reference Bureau published a pamphlet which briefly summarized Illinois constitutional history to 1934 and included reasons why a constitutional convention was needed in Illinois:

1. The taxing system in Illinois was antiquated and inequitable.
2. The state legislature exhibited unequal representation, due to the General Assembly's continued failure since 1901 to reapportion the state.
3. Chicago and other cities lacked municipal home rule.
4. Minorities were overrepresented in the cumulative voting system for electing members of the House of Representatives.
5. Judicial districts were disproportionate and unfair to large population centers.
6. Other faults were obvious in a judicial system established sixty years before.
7. The possibility of establishing a short ballot in Illinois would mean organizing popular control of the executive branch more effectively.
8. Double liability of bank stockholders, proven to be impracticable and unworkable, should be removed from the Illinois constitution.

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[101]Kenneth C. Sears, "Voting on Constitutional Conventions and Amendments," U. of Chicago Law Review, 2 (June, 1935), pp. 612-18.

[102]Illinois Legislative Council, Constitutional Revision in Illinois, 85 (1947), p. 12.

9. County and local governments were inefficient and wasteful, and should be streamlined and centralized.
10. The process of amending the Illinois constitution to correct the above problems had been proven restrictive and difficult.[103]

The pamphlet also attempted to answer some of the arguments against a convention call in 1934. To the fear that a new constitution would overturn present judicial interpretations or necessitate the rewriting of a large part of the statutes, the assertion was made that revision of the most objectionable provisions of the document would leave the great bulk of the constitution, and hence the fundamental law, unchanged. Another argument was that the disproportionate allotment of Senate districts would mean, as in 1920, that a convention would represent a minority of the population; in reply, it was stated that this was actually a strong argument for a convention call, since the malapportionment in the General Assembly was evidently going to continue until a revision of the constitution forced the legislature to act equitably and reapportion the state.[104]

One major argument remained; to some it seemed unwise to call a convention in the unstable economic and political atmosphere of 1934. Radical solutions to the state's economic and political problems by a convention were feared by some. The Chicago Tribune, one of the strongest proponents of a convention in 1918, recommended a "no" vote on the 1934 con-con referendum in a caption titled, "Save Our Constitution."[105] Nevertheless, of those voting on the referendum, 691,021 approved a convention call while 585,879 opposed it. However, the referendum failed; 56.5 per cent of those voting in the election did not express an opinion on the question.[106] Public apathy,ignorance, or disinterest in the question of constitutional reform, aided by the fear of radicalism, were the apparent causes of defeat.

Other Developments

After the failure of the convention call in 1934, periodic attempts to amend the constitution continued without success. By 1946 four amendment proposals had been submitted to the voters but none had received the majority necessary for approval. In 1938 the voters rejected an amendment to the banking provisions of Article XI which would have removed the double liability of state bank stockholders

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[103] Legislative Reference Bureau, The Constitution of Illinois (Springfield, 1934), pp. 34-70.

[104] Ibid., pp. 72-74.

[105] Chicago Tribune, November 6, 1934.

[106] Illinois Legislative Council, Constitutional Revision in Illinois, p. 14.

and permitted amendments to the general banking laws to be adopted by a two-thirds vote of each house of the General Assembly instead of the existing requirement of approval at a general election by a majority of those voting on the proposition. An amendment exempting the sale of food from the sales tax failed in 1942, followed in 1944 by the failure of an amendment allowing county sheriffs and treasurers to succeed themselves. In 1946 the fifth attempt to liberalize the amending process provided in the 1870 Constitution was unsuccessful. The proposed Gateway amendment would have replaced the old provision that required a majority of those voting in the election for popular approval of amendment proposals with a less stringent provision requiring two-thirds of those actually voting on the proposal for approval by the people.[107]

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[107] Constitution of the State of Illinois (1967), p. 10.

VII

CONSTITUTIONAL DEVELOPMENTS SINCE 1945

The Gateway Amendment

In May, 1947, the Chicago Bar Association appointed a Committee on Constitutional Revision to promote the calling of a constitutional convention. The Committee was headed by Samuel Witwer, a Chicago attorney, and included Walter Schaefer, a Northwestern University law professor and later a justice of the Illinois Supreme Court. Witwer and Schaefer had written a pamphlet entitled, "Why Illinois Needs a New Constitution," as an initial step in their effort. In May, 1947, Witwer journeyed to Springfield with several other Committee members and testified before the Senate Executive Committee on behalf of a convention call. However, the legislature failed to take any action that session.[1]

In 1949 the Bar Association Committee gained a powerful ally when Adlai E. Stevenson was sworn in as governor. The legislative program that Stevenson submitted to the General Assembly placed top priority on the calling of a constitutional convention. Stevenson's "Con-Con" package was introduced in the House on February 4, 1949, and it included a bill revising the election laws to allow the proposition to be placed on the ballot under the party circle. A straight party vote would necessarily include a vote for or against the proposition depending upon the position adopted by each party at their state conventions. As indicated above, a similar ballot arrangement was largely responsible for the success of constitutional revision until passage of the Ballot Law of 1891. Stevenson received active support from the Illinois League of Women Voters and the Chicago Bar Association in his quest for a thorough review of what he termed an "almost insurmountable roadblock to good government." One of Stevenson's early biographers characterized the opposition in this way:

> Much more strongly organized was the opposition, consisting of powerful labor, farm, and manufacturing pressure groups, plus a bloc of downstate lawmakers who feared that convention delegates would approve

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[1]Van Allen Bradley, "State's Horse-and-Buggy Constitution Finally Revised by Bipartisan Effort," Chicago Daily News, November 15, 1954.

> legislative reapportionment on an actual population basis, giving Cook County control of the legislature. There were fears by businessmen that a new constitution might pave the way for a state income tax, fears by some labor leaders that a new charter might wipe out labor's recent legislative gains, fears genuine or synthetic but loudly proclaimed that the bill of rights might be jeopardized, and protests that the proposed convention would cost from five to ten million dollars and would probably fail to produce an acceptable charter.[2]

The measure came to a vote in the House on April 14. A two-thirds majority (102 votes) was necessary for passage. Chicago Mayor Richard J. Daley was at the time serving as Stevenson's Director of Revenue and had also taken on the responsibility of being the governor's contact man with the House on the convention proposal. Daley, a former member of the state Senate, felt he had the necessary votes. After a heated seven-hour debate, during which two Democrats were brought from their sickbeds to record "aye" votes, the measure failed by six votes. Ninety-six members (76 Democrats, 20 Republicans) voted yes and 48 (46 Republicans, 2 Democrats) voted no. The Stevenson forces managed to postpone consideration to keep the measure alive for another attempt at passage. Included among those House members voting no were two Democrats and four Republicans from districts on Chicago's west side. Popularly dubbed the "West Side Bloc," they were widely believed to be associated with organized criminal elements in the city. The "Bloc" offered their six votes to Stevenson in support of the convention call if the governor would withdraw his active support from a series of bills proposed by the Chicago Crime Commission. Their votes appeared to be sufficient to pass the resolution. Stevenson refused the offer. The convention resolution came up for a second vote on May 4. This time it received only 89 votes, even though Stevenson had tabled the party circle bill in hopes of broadening his base of support.[3]

Support for the Stevenson proposal was diminished by the presence of a Republican alternative. Senate Republicans had introduced a resolution for a Gateway Amendment as a substitute for the convention call. Their proposal would have eased the existing requirement that constitutional amendments must be approved by a majority of those voting in the general election by allowing approval by two-thirds of those voting on the amendment itself. This provision was intended to reduce the stringency of the old requirement by largely eliminating the negative impact of those failing to vote on the amendment.[4]

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[2]Kenneth S. Davis, A Prophet in His Own Country (Garden City, N.Y.: Doubleday and Co., Inc., 1957), p. 343.

[3]Ibid.

[4]Under this proposal an amendment could be approved under either counting method. It also permitted submission of amendments to three articles rather than one as had been the case previously. The proposal did not alter the requirement for calling a constitutional convention. Such a proposition would still have to receive the favorable votes of a majority of all persons voting in a general election. Nor did it alter the restriction that amendments could not be proposed to the same article more than once every four years.

Stevenson would have much preferred a constitutional convention, but after the defeat of his proposal, he announced his support for the Gateway Amendment:

> We cannot wait forever for the most urgent constitutional reforms. I doubt the sincerity of the Gateway proposal. It looks like an effort to dodge responsibility for blocking much-needed changes. . . But in spite of my misgivings, I feel it is better to have something than nothing. I will urge the Democratic party in an all-out nonpartisan effort to secure ratification of the Gateway Amendment by the voters in 1950.[5]

With Stevenson's support the Gateway Amendment resolution easily passed both houses, receiving only two negative votes. The proposition would be submitted to the people in the November, 1950 general election. The General Assembly also revised the election laws to provide for submission of the proposition to the voters on a separate blue ballot. At each polling place every voter would be handed a blue ballot, informed of its purpose, and instructed to return it to the election judge whether it was marked or not. The blue colored ballot was intended to increase voter awareness of the proposition and thus stimulate voter participation on the amendment. The idea of a "notice" emphasizing the importance of voting on the amendment was adopted from a similar device used in Minnesota, whose constitution--like that of Illinois--required a majority of those voting in the election to ratify proposed amendments. In Minnesota, however, the separate ballot was colored pink.[6]

The campaign for the Gateway Amendment began shortly after the General Assembly had approved the amendment. The campaign was coordinated by the Illinois Committee for Constitutional Revision, a group consisting of a wide variety of statewide professional and civic organizations interested in the passage of Gateway. Samuel W. Witwer, who had been very active in the cause of constitutional reform as chairman of the Chicago Bar Association Committee on Constitutional Revision, was elected chairman. The ICCR conducted a well organized statewide campaign which

> ...received the backing of both major political organizations, continuous editorial support . . . news coverage in practically all daily and weekly newspapers, and the endorsement of all major labor, business, agricultural,professional, and civic organizations in Illinois.[7]

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[5]Davis, p. 346.

[6]Illinois Legislative Council, "Amending the Illinois Constitution," Memorandum 1-151, Springfield, March, 1950.

[7]Samuel W. Witwer, Jr., et al., Preliminary Outline of Proposed Campaign for Adoption of Reapportionment Amendment to the Illinois Constitution (Chicago: Illinois Committee for Constitutional Revision, mimeo, 1954), p. 2.

The Committee supervised the distribution of an enormous quantity of campaign literature--posters, explanatory leaflets, sample ballots--set up speakers' bureaus, and also established local campaign committees in 84 of the state's 102 counties. The Gateway Amendment was not tied to substantive issues, and support for its approval came from diverse sources whose specific interests may not have been coincident but who were all concerned with improving the prospects for constitutional change. Since the Chicago Bar Association began to agitate for reform shortly after the close of World War II, interest in constitutional change had begun to solidify. With a large boost from Adlai Stevenson, proponents of reform were in a position to reap the benefits of a generally recognized need to open up the amendatory process. In the November, 1950 general election the voters overwhelmingly approved the Gateway Amendment. Slightly more than 67 per cent of those voting in the election cast affirmative votes for the proposition, and only 13 per cent failed to vote.[8]

Popular approval of the Gateway Amendment generated widespread hope that revision by amendment would once again become a feasible method for initiating constitutional change. Since the form of the ballot was changed in 1891, revision by amendment had not been an easy task. Of the fourteen amendments proposed between 1891 and 1950, only two had been adopted. Gateway Amendments failed five times; proposed changes in the revenue article failed four times. The 1950 Gateway Amendment became the first amendment proposal adopted in Illinois since 1908. Under the provisions of the 1950 amendment, nine of the fourteen amendments submitted to the electorate between 1891 and 1950 would have been adopted instead of the two which were actually successful. The passage of Gateway was also met with some reservation by those who felt that the new two-thirds requirement would still make it excessively difficult for successful "piecemeal" change. On the whole, however, Gateway was greeted with enthusiasm by proponents of constitutional revision. It appeared that it would be quite possible, although difficult, to obtain the required popular vote. It also appeared that some of the delay inherent in the amending process might be alleviated by the provision allowing amendments to three articles at any one time. Although the calling of a constitutional convention had been the primary goal of the civic and professional groups active in the years prior to 1950, the approval of Gateway seemed at the time to be a reasonable alternative for constitutional reform.

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[8]The blue ballot was undoubtedly the cause of a large portion of the victory. Between 1930 and 1946 when amendment proposals were printed on the regular ballot, non-voting averaged nearly 60 per cent.

The 1954 Reapportionment Amendment

In his opening day address to the General Assembly on January 3, 1951, Governor Adlai Stevenson specifically delegated responsibility for selecting the first amendments to be submitted under Gateway to the members of the 67th General Assembly.[9] Perhaps spurred on by the optimism generated by the passage of Gateway, the legislature subsequently passed four amendments to three articles of the constitution--the maximum allowed under the new provision. The four proposals would have: 1) provided a new revenue article permitting the classification of property but prohibiting a graduated income tax; 2) amended the counties article to allow county sheriffs and treasurers to succeed themselves; 3) amended the counties article to remove the salary limitations on county officers; and 4) amended the corporations article to remove the double liability provision for state bank stock owners. At the following general election in November, 1952, the first two proposals were defeated, failing to obtain either a two-thirds majority of those voting on the proposals or a majority of those voting in the election. The second two proposals failed to get a majority of those voting but did gain approval under the new two-thirds provision of the Gateway Amendment. Thus, Illinois' first experience with its liberalized amendatory process was at least a partial success, no doubt gratifying to advocates of constitutional reform.

During the next session of the legislature, amendments to three articles of the constitution passed, providing for reapportionment of state legislative districts, extending the term of the state treasurer from two to four years, and permitting the state to sell land in connection with the Illinois-Michigan Canal. All were successful in the ensuing general election, being approved under both counting methods. The reapportionment amendment is the most significant of the three proposals, and the history of its passage by the General Assembly and its subsequent approval by the voters helps to highlight both the problem of initiating long-sought constitutional changes and that of mobilizing popular approval.

The Constitution of 1870 originally directed the General Assembly to reapportion 51 congruent House and Senate districts every ten years. By 1953, 42 years had passed since the last reapportionment in 1901. During this period there had been vast population changes in the state. According to the 1950 census, over half the state's population was located in Cook County, but under the 1901 apportionment it had only 19 of 51 legislative districts. There were also great disparities within the county. For example, the suburban sixth district contained 700,325 people, while the seventeenth district, located on the west side of Chicago, contained only 39,368. Both districts, of

[9] Senate Journal, 67th General Assembly, January 3, 1951.

course, sent the same number of representatives to the state legislature. Over the years, reapportionment had been a persistent issue. It was the source of sharp conflict during the 1922 convention between delegates from downstate, who were in the majority, and delegates from Chicago and Cook County. The reapportionment article finally agreed upon would have delegated 19 of 57 Senate districts to Cook County; 153 House seats were to be apportioned according to population. Between 1922 and 1952, some twenty resolutions proposing amendments to the legislative apportionment article were introduced in the General Assembly but failed to pass.[10]

One of the major obstacles to a new legislative apportionment article was seen to be the restrictive amending process. The passage of Gateway apparently removed this obstacle and generated renewed interest in the problem. Several proposed amendments were introduced in the 1951 legislative session but none was successful. In 1953, Governor William Stratton, like most of his predecessors, included legislative apportionment in his program for that session of the General Assembly. The governor, however, was determined to gain approval for a new apportionment article. Several proposals were introduced as the 1953 session got underway, but it was not immediately clear which of them had administration support. Then late in the session on May 27, the governor's proposal was introduced. It provided for apportionment on the basis of population in the House and on the basis of geographic area in the Senate.[11]

Senate Joint Resolution 32 was recommended "do pass" by the Senate Committee on Elections and Reapportionment on June 3 and easily passed the full Senate two weeks later 43-2. In the House, however, opposition was building among the Democratic members led by Minority Leader Paul Powell of Vienna. The governor's party controlled both houses of the legislature, but the Republican majority in the House, unlike the Senate, was relatively small under the cumulative voting system. Stratton also needed 102 votes, two-thirds, to pass his constitutional amendment resolution. Powell and others argued against Cook County domination of the House. Majority Whip John Lewis of Marshall, speaking in favor of the Stratton plan, suggested to his downstate colleagues that although they would lose nine seats in the House, they would gain two seats in the Senate--a more favorable arrangement than any previous plan. The vote on June 17 fell ten votes short of the required majority, 92-29. Twenty-eight representatives did not vote, most of them Democrats. The House sponsor of the resolution then successfully moved to postpone consideration. In the 24 hours following

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[10]Illinois Legislative Council, Reapportionment in Illinois, Springfield, 1952.

[11]Gilbert Y. Steiner and Samuel K. Gove, Legislative Politics in Illinois (Urbana: University of Illinois Press, 1960), p. 88.

the vote, Stratton brought all of his available resources to bear to obtain the needed ten votes.[12]

By noon of the day following the unsuccessful vote on reapportionment, the governor had persuaded the requisite number of recalcitrant House members to back him on reapportionment. Utilizing the time-honored democratic devices of compromise and conciliation, Stratton bargained and traded and finally got what he wanted. Even House Speaker Warren Wood, who had been strongly against the plan, spoke on its behalf when the resolution came up for a second vote. The second time around the measure passed easily 120-17. Clearly the governor's tenacity was the prime factor in the passage of the reapportionment plan, but there was also a feeling among many legislators that popular approval might not be forthcoming. Thus, some may have been prompted to vote for the measure while expecting it to be defeated in the general election. On the whole, passage of the amendment was generally unexpected since, as Steiner and Gove have remarked, "it markedly changed the status quo."

> Members were warned of the potential danger to their seats by the House Minority Leader, who characterized the amendment, on the floor of the House, as "the same thing as an employee signing his resignation." There was substantial opposition to the proposal in the General Assembly, and it could not have been passed without extensive logrolling, especially after a House Democratic conference was held wherein it was explained that it was not a party measure.[13]

The proposed amendment divided the state into three geographical regions for apportionment purposes: Chicago, Cook County outside Chicago, and the remaining 101 downstate counties. District membership in each House was increased and separate districts were established for senators and representatives. Districts were allocated among these three areas as follows: Chicago, 23 House and 18 Senate districts; Cook County, 7 House and 6 Senate districts; downstate, 29 House and 34 Senate districts. The amendment would bring a sharp redistribution of seats in the General Assembly. Downstate Illinois would no longer have almost 70 per cent of the seats in both houses; instead, this portion of the state would have 49 per cent of the seats in the House and 59 per cent in the Senate. Senators would be elected from single-member districts, while multi-member districts with the cumulative voting system were retained for House members. The apportionment of House districts was to be based on population, while area was to be the "prime consideration" in fashioning Senate districts. Reapportionment of the House was called for in 1963 and every ten years thereafter. Senate districts at the time appeared to be permanent.

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[12]Russell E. Olson, "Illinois Faces Redistricting," National Municipal Review, XLIII, No. 7 (July, 1954), pp. 343-46.

[13]Steiner and Gove, p. 89.

Popular approval of the reapportionment amendment followed much the same pattern as that of the Gateway Amendment. In both instances a statewide citizens' committee spearheaded a vigorous campaign which was endorsed by both political parties and received the active support of nearly all major business, professional, and civic organizations in the state. Both efforts also recieved substantial editorial support among Illinois newspapers, especially the major Chicago dailies. The Gateway and reapportionment experiences suggest that one of the keys to a successful statewide campaign lies with a unified organization and the absence of strong opposition.

In August of 1953 Governor Stratton asked Samuel Witwer to take charge of the campaign for the reapportionment amendment. Witwer again consented and during the next four months formulated a detailed preliminary campaign outline with the aid of the same Chicago public relations firm that had worked on the Gateway Amendment campaign. In February, 1954, the Illinois Committee for Constitutional Revision (ICCR) was reactivated at a meeting attended by representatives of interested organizations. Witwer was elected chairman and Charles B. Schuman, president of the Illinois Agricultural Association, was elected co-chairman. Schuman had served with Witwer as co-chairman of the Gateway ICCR. In addition to four other officers, the ICCR included numerous member organizations, a board of directors, and a hired staff operating out of offices in Chicago and Springfield.[14]

The first major task confronting the newly reactivated ICCR was securing the endorsements of as many statewide organizations as possible. This was a crucial step since the ICCR was primarily an association of groups interested in passage of the reapportionment amendment. These groups were also needed to provide the ICCR with channels of communication to their memberships and to provide a large portion of the financing and expertise essential to a successful statewide campaign. Fifty-nine organizations had promised their support by May, 1954. To supplement the organizational resources of many of the endorsing organizations, the ICCR established local "citizen committees" in many downstate counties and in the villages and townships of Cook County to coordinate and encourage the activities of local supporters.

The ICCR supervised the preparation of vast amounts of campaign literature detailing the inequities of the old reapportionment scheme and presenting arguments on behalf of the proposed amendment. The Committee also published two series of newsletters dealing with current developments in the campaign. A finance committee was formed of ICCR directors who solicited financial contributions from corporations and member organizations. Individual contributions were solicited through the newsletters. The Committee's major on-going responsibility was the centralized coordination of the campaign effort:

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[14]This account of the campaign for the reapportionment amendment is taken from John E. Juergensmeyer, The Campaign for the Illinois Reapportionment Amendment, Institute of Government and Public Affairs, University of Illinois, Urbana, 1957.

> Phases of emphasis for the campaign were drawn from the experience of the Gateway effort. Themes, slogans, and arguments were fixed by the Committee for use by all groups. The repetition by many organizations throughout the state of such simple phrases as "Vote Yes on the Blue Ballot," "Honest and Fair Representation," "Eliminate the Rotten Boroughs," and "Protect Fair Rural Representation," was effective in reaching voters. Special events in the blue ballot campaign were organized on a statewide basis. Efforts of citizens' committees were tied in with the work of local groups of statewide organizations to achieve regional unity. Campaign plans and outlines were often revised to meet changing situations. Perhaps most important, the ICCR was a rallying point for small groups and individuals desiring to participate in the campaign, but needing direction for effective efforts.[15]

Organized opposition to the amendment was minimal. Early in the campaign, over forty downstate Democratic legislators and candidates met in Springfield to discuss the amendment. The meeting was organized by House Minority Leader Paul Powell. The group passed a motion to oppose the amendment but did not form a campaign organization. There were also several Republican legislators from downstate Illinois who were opposed to the amendment but who did not speak out vigorously against it, primarily because of Governor Stratton's strong support of the amendment. Powell and several downstate Democrats publicly opposed the amendment during the course of the campaign, but no effort was made to unite opponents. Both political parties endorsed the amendment at their state conventions during the summer of 1954, which may have helped to dampen some of the opposition among members of the legislature. The apparent unanimity of support for the amendment also may have made it difficult for legislators to oppose it without seeming to be doing so from selfish motives.

Support was almost unanimous among the state's 93 daily newspapers. However, many weekly newspapers strongly objected to the amendment. Editorial writers on many occasions looked suspiciously at the prospect of increased Cook County representation in the legislature; the September 16, 1954 edition of the Toledo Democrat, for example, contained this suggestion:

> Let's get rid of Cook County. Let's give it to Indiana, Wisconsin, or Texas. One county of professional politicians has no business ruling the other 101 counties in the state.

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[15] Ibid.

As the campaign entered the final stage, reapportionment received an unexpected boost from the nomination of James A. Adduci, a Republican, to fill a vacancy for a House seat in the Second District on Chicago's west side. Adduci had served nine terms in the House before resigning in 1951 after his indictment for accepting commissions on state contracts. He had also been mentioned in connection with a "phantom payroll" scandal in Chicago several years previously. Since he would be unopposed on the ballot, his nomination was tantamount to election. The Adduci candidacy stirred a tremendous reaction among the press; newspapers saw such "mob domination" of the legislature as a consequence of the failure to reapportion. The ICCR took quick advantage of the uproar and publicized it thoroughly throughout the state. The Adduci controversy apparently gave the campaign a needed shot in the arm:

> The difference in the character of the Amendment movement before and after this one event was noticed by those close to the campaign. William W. Downey, Governor Stratton's chief administrative assistant, said that while earlier the campaign had "lulled," the Adduci candidacy made it "snowball." John K. Cox, who handled the campaign of the Illinois Agricultural Association, explained that although the campaign looked "cold" earlier, after this it "looked like it had turned;" and Witwer expressed the opinion that without the Adduci candidacy the Amendment effort probably would not have succeeded.[16]

As the campaign entered its final six weeks, emphasis was shifted to a mass publicity effort stressing the simple slogan "Vote 'YES' on the Blue Ballot." The local citizen committees distributed literature at shopping centers and on street corners; telephone committees were organized on a voluntary basis; the local media were flooded with editorial and public service program suggestions.[17] The statewide publicity campaign included a continuous barrage of news releases, billboards, and radio and television spot announcements, all featuring the basic slogan. By the end of the campaign, more than 1,500,000 pieces of literature and 4,000,000 marked sample ballots had been distributed. The climax of this concluding phase of the campaign came with the joint proclamation of Blue Ballot Week, October 23-30, by Governor Stratton and Chicago Mayor Martin Kennelley.

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[16] Ibid.

[17] As an example of what an effective local committee can do, consider the efforts of one such committee in DuPage County: 1) 500 women were organized to make 20 telephone calls each on the day before the election; 2) commuters at the Elmhurst station were urged to "Vote 'YES' on the Blue Ballot" through the public address system on the day prior to the election; 3) sidewalks and refuse boxes were stenciled with the Blue Ballot slogan; 4) a streamer was placed across a major downtown street and a billboard erected; 5) posters were made for local stores; 6) a pre-election pancake festival was held and Blue Ballot literature was distributed to local school children. Ibid.

On November 2, 1954, the voters of Illinois gave the reapportionment amendment a tremendous vote of approval. Of the 3,455,173 people voting in the election, 2,610,726 voted on the proposition, and 2,085,224 voted in the affirmative. The amendment passed under both counting methods, receiving 60 per cent of the total vote cast and 80 per cent of the vote cast on the proposal. In the downstate counties 64 per cent of those voting on the proposal approved it, while in Cook County the comparable vote was an incredible 92 per cent. The two other amendments on the ballot also passed, receiving slightly smaller votes than the reapportionment amendment.

Experience with the amendatory process in the four years after the passage of Gateway was the occasion for genuine optimism among proponents of constitutional change. Seven amendments had been submitted to the voters in two general elections and five had been successful including a long-sought revision of the apportionment article. However, subsequent experience suggests that these early years may have been a honeymoon period in the recent history of constitutional revision. Since 1956 eight amendments have been submitted to the voters but only one--reorganization of the judiciary in 1962--has met with their approval. Revision of the revenue article failed in 1956 and 1966. A judicial amendment failed in 1958 along with another attempt to permit county sheriffs and treasurers to succeed themselves. Annual legislative sessions and a provision for the continuity of state government in periods of emergency were unsuccessful in 1964. A second amendment on the ballot in 1966, the third attempt to provide for the succession of county officers, also failed. Attempts at revision continued--1960 was the only year in which no proposal was submitted--but success was elusive.

Revenue and Judicial Reorganization

The major campaigns for constitutional change after 1956 have focused on the revenue and judicial articles of the constitution. Other amendments have been proposed, but pressures for change in these two areas reflect the desire for a significant redistribution of political power and economic resources in the state. For this reason this description of constitutional revision after Gateway will conclude with a discussion of the successful passage of the judicial amendment in 1962 and the failure to amend the revenue article in 1966.

Efforts toward judicial reform in Illinois had come for many years from the Illinois and Chicago Bar Associations. As early as 1934 the Chicago Bar Association had developed a reorganization plan that reflected successful attempts at judicial reform in several other states. In Illinois, however, judicial reorganization did not generally receive much attention by proponents of constitutional revision until the late 1950's. As reorganization of the judiciary became a major political issue it was clear that early activity by the organized bar as well as its later efforts had helped to lay much of the groundwork for the success of the judicial amendment in 1962.

The passage of Gateway stimulated interest in reform of the state judiciary. Under the constitution of 1870, the Illinois judicial structure is an elaborate elective system which includes a supreme court, circuit courts, county courts, justices of the peace, and police magistrates. The constitution also authorizes the creation of additional courts in cities and towns. Within the judiciary there were nearly three hundred elective full and part-time offices. Critics of the system felt that limited tenure and nomination and election on partisan tickets had integrated the judicial system with the political system in Illinois. One of the major goals of judicial reorganization was the separation of judicial activity from political activity.

In 1950 Governor Adlai Stevenson asked the Dean of the University of Illinois College of Law to look into the problem of revising the judicial article. Rubin Cohn, a member of the law faculty, was given responsibility for developing a set of proposals which might be included in a revised article. The resultant draft delineated the problem areas of judicial reorganization and suggested some reasonable goals:

> A simplified and integrated court structure under the administrative control of the Chief Justice; an absence of authority for the legislature to create additional courts; vesting of exclusive power in the Supreme Court to make rules governing practice and procedure in all courts; statewide constituencies for Supreme Court judges; incorporation of a canon of ethics of the American Bar Association that no judge should participate in politics while on the bench; an additional specific prohibition applicable to all judges against contributing to any political party or taking part on any political campaigns; a policy of non-disturbance of the tenure of elected officials--judges, justices of the peace, bailiffs, clerks--holding office on the effective date of a new article; and the American Bar Association plan for appointment by the governor of judges whose retention in office would subsequently be voted upon at a general election.[18]

Although there was ample disagreement over judicial reorganization in the following years, the basic problem areas and objectives outlined in this early draft were "not seriously challenged throughout the extended controversy."[19]

In 1951 the General Assembly created an interim study commission to investigate the need for judicial revision, to explore existing

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[18]Steiner and Gove, pp. 169-70. This description of attempts at judicial reform through 1958 draws heavily from Steiner and Gove, pp. 164-98.

[19]Ibid., p. 169

alternatives and to prepare a proposed draft of an amendment. Following adjournment of the legislature the Chicago and Illinois State Bar Associations created a joint committee also to look into the problem. By the time the legislature convened two years later the interim study commission in its report to the General Assembly acknowledged that the committee was "hopelessly divided" over the question of the selection and tenure of judges. The issue was the choice of an appointed or an elected judiciary. The amendment drafted by the Bar committee featured an appointed judiciary, and it was this feature that generated sufficient opposition in the legislature to defeat judicial reorganization in 1953. Opposition came generally from Chicago Democrats and downstate legislators. Governor William Stratton was officially neutral on the issue. The plan proposed by the Bar committee and rejected by the legislature would have significantly altered the political status quo in many downstate counties and within Cook County. It was clear that the political leaders in these areas were not convinced by the Bar committee or other reform pressures of the advisability of such a change. It was not until 1957, when the legislature finally approved a judicial amendment, that these political forces finally converged. Then, Governor Stratton and Richard J. Daley, the Democratic Mayor of Chicago, threw their weight behind the judicial amendment and it passed,[20] although in substantially different form than the 1953 Bar committee proposal. The 1957 amendment left the question of selection and tenure up to the legislature with approval by the voters in a statewide referendum.

The organized campaign on behalf of the judicial amendment was based largely upon the previous experiences of the Gateway and reapportionment campaigns. Heading up the statewide effort was a group called the Committee for Modern Courts.[21] Heavy emphasis was placed upon the encouragement of local "Blue Ballot Committees" which solicited the endorsement of local groups, formed speaker's bureaus, and distributed literature locally. The theme of the campaign was "Vote Yes on the Blue Ballot." There was little organized opposition in the state. Both political parties supported the amendment and the committee had received endorsements from 90 statewide organizations. However, there was scattered opposition among downstate politicians and a few lawyers and judicial officials.

In November, 1958, the first comprehensive proposal for judicial change to be submitted to the voters since 1870 was defeated in a close election. The amendment failed to receive either a majority of those

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[20]The fact that the 1957 legislature was newly apportioned may have been an additional factor in achieving approval of the amendment. Alleviation of the great disparity between Cook County and downstate representation may have helped narrow the traditional cleavage between the two areas in the General Assembly, contributing to a more congenial legislative attitude toward judicial reorganization. However, as Steiner and Gove have pointed out, the two basic conditions necessary for approval were the support of the governor and the mayor of Chicago. Ibid., pp. 187-88.

[21]The committee was officially named the Committee for Modern Courts of the Illinois Committee for Constitutional Revision.

voting in the election (46 per cent) or two-thirds of those voting on the amendment (64 per cent). Slightly over 28 per cent of the voters failed to vote on the amendment.[22]

Under the constitution, amendments may not be offered to the same article more often than once every four years. Thus, attempts at judicial reorganization would not be possible again until at least 1961. Pressures for reform did not abate after 1958, and in 1961 the General Assembly passed an amendment to the judicial article that closely paralleled the unsuccessful 1958 amendment. The amendment submitted to the voters in 1962 was intended to simplify the judicial system by centralizing its administration and eliminating overlapping jurisdictions. The new court system would be administered by the Illinois Supreme Court which would appoint an administrative director to supervise daily administrative responsibilities. A single trial court, the Circuit Court, would replace the numerous police magistrate courts, justice of the peace courts, county, probate, and criminal courts. The Circuit Court would consist of Circuit Court judges, Associate Circuit Court judges, and magistrates appointed by the Circuit Court judges. Judges would be nominated and elected to begin with, but once elected each judge would run for re-election on his record. They would not appear on the ballot under a party label. The seven justices of the Supreme Court would continue to be elected by district but the districts were redistributed so that Cook County would have three instead of one and downstate would have four instead of six. There would also be a full-time appellate court. Previously county judges did double duty as appeal judges. Proponents of the amendment felt that the new system would reduce the costs and delays of litigation as well as insure greater political independence of the judiciary.

The statewide campaign for the amendment was once again coordinated by the Committee for Modern Courts, this time under the leadership of James Rutherford, a Chicago insurance executive. The committee followed much the same strategy as in 1958. The bipartisan campaign was formally launched in Springfield on May 19, 1962, at a meeting in the governor's mansion attended by leaders of both parties and representatives of the Illinois Bar. Speeches were given by Governor Otto Kerner, a Democrat, and Republican Secretary of State Charles F. Carpentier. The Mayor of Chicago, Richard Daley, sent a message pledging his support.[23] By election time, 76 organizations representing agricultural, business, civic, religious, and labor interests pledged their support for the amendment. Both political parties also

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[22]The closeness of the vote prompted several backers of the amendment to file suit claiming that the proposal had actually received a popular majority. The suit was taken to the Illinois Supreme Court to obtain a ruling that votes cast by voters who marked their ballots with an "√" rather than an "X" or simply wrote the word "yes" should have been counted. They believed that had these votes been counted the amendment would have passed. The claim was rejected by the Court on January 20, 1960. Schribner v. Sachs, 18 Ill. 2nd 400 (1960).

[23]St. Louis Post-Dispatch, March 21, 1962.

endorsed the amendment. Formal opposition came from eleven organizations, principally the Cook County justices, Magistrates and Constables Association, and the County Officials Association of Illinois.[24] Major objections to the amendment centered on the new allocation of Supreme Court districts and the method of judicial election. Many downstate politicians and judicial officials argued that the new districting plan would allow Cook County domination of the Supreme Court. Some Republicans foresaw eventual Democratic control of that body. Many opponents disliked the proposed form of judicial retention, preferring instead clear-cut partisan elections. In addition many of the lower level judicial officers who were relatively independent under the old system--justices of the peace and magistrates, for example--strongly objected to being integrated into a unified administrative system or in the case of the justices of the peace, of being eliminated altogether. There were also fears, largely unfounded, that the amendment would escalate the cost of operating the Illinois judicial system. By and large, opponents were not numerous and never mounted an organized campaign effort.

The amendment passed by a comfortable margin in the November, 1962, general election, supported by a majority of those voting in the election (57 per cent), but falling just short (65 per cent) of getting a two-thirds majority of those voting on the amendment.

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State tax policy has been a consistent source of controversy in Illinois, particularly in the years since World War II. Each session of the General Assembly is invariably accompanied by a lively fight over revenue as rising state expenditures place an increasingly heavy burden on the state's tax structure. The legislature has usually acted to increase existing tax rates or broaden their base slightly. "Fundamental changes in the tax system, such as the introduction of an income tax, or classification of real property, have been prevented by doubts about constitutionality bolstered by the lobbying efforts of groups which are satisfied with the present tax structure."[25] Proponents of such changes may either seek to persuade the legislature to enact new taxes and risk a fiscal crisis if those taxes are subsequently declared unconstitutional by the Illinois Supreme Court or they may seek amendments to the constitution. Attempts have focused to some extent on the second alternative. Between 1871 and 1965 seven amendments have been submitted to the voters for approval but none have been successful.

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[24]Chicago Sun-Times, November 3, 1962.

[25]Ann H. Elder and Glenn W. Fisher, An Attempt to Amend the Illinois Constitution: A Study in Politics and Taxation (Urbana: Institute of Government and Public Affairs, University of Illinois, June, 1969), p. 1.

The revenue article submitted to the voters in November, 1966, was the product of a series of developments that began in 1961. When Governor Otto Kerner took office, the state faced a severe financial crisis. State expenditures had exceeded revenues ever since the war, but the deficit had always been made up by a surplus in the General Revenue Fund which had been built up during the war when capital construction in the state was at a standstill. By the time Kerner took office, that surplus had run out and the state faced a real shortage of funds. In the last few days of the 1961 session, the General Assembly finally enacted a series of administration proposals to increase existing rates on various taxes. The governor had proposed no basic changes in the tax structure, and the increases approved by the legislature only served to postpone a necessary decision on the adequacy of existing revenue sources. In his budget message, the governor also announced the creation of a Revenue Study Commission to look into the tax system and make recommendations to the 1963 General Assembly. The Commission was headed by Robert S. Cushman, a prominent Chicago attorney. The report eventually submitted by the Commission documented the inequities of the status quo, which placed the heaviest tax burden on the individual through consumer and property taxes, but recommended no major changes. For the most part the Commission recommended increases in existing taxes rather than reliance on new revenue sources. The revenue and expenditure projections included in the final report, however, showed clearly that the revenue needs of the state could not be supported indefinitely by increasing the rates of existing, narrowly-based taxes. A staff paper included in the report also suggested the possibility of a state income tax under existing constitutional provisions. Few of the Commission's recommendations were acted upon by the legislature in 1963, but its final report did provide a rationale for change and had suggested several new directions for action. During the session, at the governor's request, the Commission supplemented its final report with a suggested revision of the revenue article. Although there was little agreement on general principles of taxation, the Commission members finally did recommend an article featuring limited classification of all property and a limited, flat rate income tax. The legislature took no action on altering the tax structure in 1963, but it was apparent that momentum was building for some sort of change.[26]

The revenue amendment approved by the legislature in 1965 was written, for the most part, prior to the session by representatives of those interest groups which over the years have been most successful in influencing Illinois tax policy. On the issue of taxation, interest groups in the state have gravitated into two loose coalitions. On the one hand, business groups have tended to favor the existing tax system. Although the coalition of business groups is by no means without disagreements on tax policy, they have generally supported existing revenue

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[26] Ibid., pp. 24ff.

sources and worked to minimize increases in rates. Business groups favor the status quo because they pay few direct taxes and these can be passed on to their customers. On the other hand, agriculture, labor, and education interests support a redistribution of the tax burden, agreeing upon an income tax as the best way to achieve their various goals. The business coalition has been the dominant force in state tax policy, and any realignment of the tax structure would have to be accomplished with their support. After the close of the 1963 legislative session, both sets of interests realized that pressures for reform were building. Recognizing that some change might be inevitable, business groups saw the necessity for making sure they could accommodate that change. From March, 1964, to February, 1965, four representatives from agriculture, education, and labor and five from business met regularly as the "Selected Organizations Concerned with Amendment of the Revenue Article of the Illinois State Constitution" to write a revenue article acceptable to all. Thus, before the legislative session began, the major interest groups had made the necessary compromises and struck the crucial bargains. The groups involved had taken care to produce an amendment which would reflect as nearly as possible the interests of all organized groups likely to be affected.[27]

As the General Assembly turned its attention to the revenue question, it was clear that more dialogue was needed before an amendment would be approved. During the session initiative for revenue reform came from the select committee, the governor, and the Senate majority leader, but there was no substantial support for the majority leader's proposal. The governor's recommendation closely paralleled the Committee's but differed significantly on the issues of real estate classification and a state income tax. The Committee's proposal included a limited flat rate income tax of individuals and corporations, but the governor's proposal did not specifically mention one, including instead a provision stating that income was no to be considered property. It was thought that this provision referred to an earlier Supreme Court decision which declared income to be property and therefore subject to the uniformity provision of the existing revenue article. These differences were finally settled in a special joint legislative committee set up specifically for that purpose. The joint committee worked with the select committee's draft and incorporated changes into its basic framework. The compromise income tax provision finally agreed upon was a flat rate tax on individuals and corporations with a 6 per cent ceiling; up to 3 per cent could be levied by the legislature without a statewide referendum. This compromise was reached with relative ease, but agreement over the classification of property was difficult and time-consuming. A classification scheme was finally worked out which provided for statewide classification by degrees--first to counties of 100,000 and finally to classification of Cook County only. The proposal passed the House 143-18, with opposition coming from liberal Democrats who favored a graduated income tax and more flexibility in allowing the legislature

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[27] Ibid.

to levy taxes. It passed the Senate 46-7 with all negative votes coming from Republicans who wanted prohibition of an income tax.[28]

By the end of May, 1966, Governor Kerner had appointed a committee of 100 civic leaders to lend a "citizen's flavor" to the campaign on behalf of the amendment. Another citizen's committee, which was formally incorporated and was made up of representatives of interest groups, actually had responsibility for running the campaign. This arrangement sometimes caused confusion since William J. Crowley, a vice-president of the Northern Illinois Gas Company, was chairman of both groups. The same public relations firm was engaged which had worked in the Gateway and reapportionment campaigns. By this time local organizations in support of the measure were being developed throughout the state. Organization in rural areas was supervised by the Illinois Agricultural Association and in urban areas by the State Chamber of Commerce.[29]

As the history of constitutional revision in Illinois has aptly illustrated, change in the state's basic charter can come only in the absence of sustained opposition. It is the opposition much more than the support which is the critical factor in any referendum campaign. As it turned out, the negotiating process engaged in before and during the legislative session had not produced a compromise which was satisfying to all of the groups ultimately involved in creating state tax policy. One difficulty was the lack of publicity received by the efforts of the select committee before the session and subsequent drafting efforts during the session. Furthermore, the small circle of lobbyists and legislators who actually drew the amendment was not sufficiently representative of all salient interests. As a result, the public had only a vague idea of what was happening, a confusion compounded by the technical nature of the issue, and many groups vitally interested in tax policy were not represented. The compromise amendment agreed upon really satisfied none of the groups that had developed it. In the words of one observer, "Too many gave up too much to get an amendment which was satisfactory to too few."[30]

The revenue amendment's chances for popular approval began to diminish as various groups and individuals announced their opposition. First, a small group of Democratic legislators denounced the amendment as restrictive and regressive and a step backward in revenue. The United Steelworkers announced their opposition on February 1, 1966, and were followed a month later by the executive board of the state AFL-CIO. At their convention in April the Illinois Congress of Parents and Teachers declared their opposition. The Independent Voters of Illinois also added their voices to the growing chorus, along with the League of Women Voters. The Illinois and Chicago Bar Associations were

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[28] Ibid.

[29] Ibid.

[30] Ibid.

sharply split on the issue and neither was a significant factor in the campaign. Opposition had grown to the point where a formal organization, the Defeat the Revenue Article organization, was incorporated on September 20, 1966. This organization was severely hampered by lack of funds, but its existence and support by a wide variety of respected groups, was an accurate index of the rough going faced by proponents of the amendment.

After an erratic campaign, in which both sides were hindered by lack of funds, the revenue amendment was defeated at the polls failing to get either a two-thirds majority of those voting on the amendment (53 per cent) or a majority of those voting in the election (42 per cent). The rate of non-voting on the amendment was 22 per cent.[31]

The Post-Gateway Period - An Assessment

The post-Gateway results have not fulfilled the hoped for reform which originally accompanied passage of the amendment. Since 1950, fifteen constitutional amendments have been submitted to the voters; of these, six have been approved and are now part of the constitution. The provisions of Gateway were directly responsible for the success of only two of these six. Furthermore, of the successful amendments only two--reapportionment of the legislature in 1954 and the new judicial article of 1962--could be said to have major significance. In the years since Gateway there has undoubtedly been a revived interest in the amendatory process. Not only has there been a relative increase in the number of amendments submitted to the voters but the proportion of those adopted is also slightly higher than during the pre-Gateway era. However, the fact remains that most of what has been accomplished was done during the years directly after passage of the amendment. Seven of the fifteen amendments submitted since Gateway were submitted by 1954 and all but two of these were approved. Of the eight amendments submitted in the intervening fifteen years only one has been successful. After an initial flush of success, the extensive revision that was to be the aftermath of Gateway has not materialized to any significant extent.

In analyzing the history of "piecemeal" revision of the constitution since the passage of Gateway, several observations can be made. Examination of successful amendment campaigns suggests some modest generalizations about the ingredients helpful in achieving popular approval. The absence of organized opposition and the presence of coordinated leadership are invariably associated with a successful campaign effort. During the Gateway campaign, for example, known opposition was limited to two small statewide organizations and the vigorous efforts of the Illinois Committee for Constitutional Revision

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[31]A second proposal on the ballot which would have amended the counties article to allow county sheriffs and treasurers to succeed themselves was also defeated. This was the third time this proposal had failed at the polls since 1952.

made possible effective coordination and was also a vehicle for reconciling differences among proponents. ICCR efforts were also enhanced by the availability of sufficient funds. A similar situation obtained during the campaign for the reapportionment amendment which, in many respects, was simply an extension of the Gateway campaign in terms of support and strategy. Simple, straightforward campaign appeals also seem to be helpful. In 1952 voters were urged to simply "Vote Yes" for Gateway; two years later in the campaign for reapportionment the appeal was to "Vote Yes on the Blue Ballot" which actually carried two other proposals. Simplicity as to issue also seems to help clarify the voting decision. Both the Gateway and reapportionment issues could be couched in relatively simple terms, and both had been public issues of long standing. In contrast, the issues of revenue and judicial reorganization are complex and the public debate that accompanied them inevitably involved discussion on several levels of understanding which may have confused the man on the street. The complexity of the issue also allows the political parties and interest groups to take ambiguous stands which further confuse popular understanding.

It should also be mentioned in passing that the change in the election laws that accompanied Gateway has successfully stimulated voter participation. Since 1952, constitutional amendments have appeared on separate blue ballots, even in districts with voting machines.[32] Each voter is handed the ballot individually and required to return it to the election judge whether or not he has marked it. Since 1952, non-voting on amendment proposals has averaged about 24 per cent. Between 1930 and 1946, when propositions were printed on the left side of the ballot, non-voting averaged just under 60 per cent. Obviously the rate of voter participation on amendment proposals had a great deal of importance under the pre-Gateway requirement since failure to vote constituted an unconscious no vote. Under Gateway the effect of participation rates is open to speculation. With one exception, every amendment proposal submitted since 1952 has received an affirmative vote from a majority of those voting on the amendment, indicating that those voters who do vote tend to support the proposition. This raises speculation over the effect of high participation rates on chances of passage. If more people could be mobilized to vote, would the chance of passage be enhanced in view of the general observation that those who do participate tend to vote yes? Since participation rates have remained fairly stable in recent years, the question seems academic. As the non-voting rate decreases, chances for passage under the old provision increases. However, given the normal rate of participation in Illinois, the Gateway criteria will remain the more frequent method of approval.

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[32]Depending upon the area of the state, Illinois voters may be required to use paper ballots, mechanical voting machines, or IBM cards. In each case, a separate blue ballot is used for voting on constitutional propositions.

In a perceptive analysis of electoral behavior in all constitutional amendments submitted since 1952, Thomas Kitsos has identified certain patterns of voting behavior established by Illinois voters.[33] His data indicate a clear division between downstate and Cook County voters. Normally constitutional amendments receive strong support from Cook County and strong opposition from the remaining downstate counties. He concludes that "Cook County 'yes' votes are counteracted by downstate 'no' votes to a certain extent and the success or failure of an amendment proposal depends on the relative magnitude of those two opposing vote patterns."[34] Secondly, there is no convincing evidence that proposals will receive any special advantage from being submitted in a presidential or nonpresidential election year. In addition, there is no evidence that either a single-proposal or multiple-proposal submission will have any significant impact on the outcome of the election. Illinois voters have been quite selective over the years. The most that can be said is that a relatively noncontroversial proposal may be aided by an accompanying amendment that receives a large majority. However, it is quite unlikely that a relatively unfavorable proposal can slip by on the strength of a more favorable proposal on the ballot. The significance of substantive issues seems much more important than single or multiple submission. Thirdly, the voters are not particularly inclined to approve a proposition submitted for a second or third time. More often than not, propositions receive higher votes the first time around. In evaluating the amendatory process under Gateway, Kitsos concludes that "under present amendment requirements, the 'piecemeal' approach to constitutional revision is a long and arduous process. . . If (the pace since 1952) is continued, significant revision of the constitution through the normal amending process will take an incredibly long time."[35]

The 1968 Convention Call

Disenchantment with the amendatory process grew in direct proportion to its inability to provide access to desired constitutional reforms. By 1960, various members of the Illinois Bar, government officials, students of government, scattered civic groups, and especially the Illinois League of Women Voters, began to realize that Gateway had not fulfilled the promise suggested by its name. In response to some of these evolving pressures, the General Assembly created the Constitution Study Commission in 1965. The Commission consisted of twelve members of the legislature and six public members appointed by the governor. The enabling legislation gave the Commission a broad directive to examine all sections of the constitution, to determine where

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[33] Thomas Kitsos, Constitutional Amendments and the Voter, 1952-1966, Commission Papers of the Institute of Government and Public Affairs (Urbana: University of Illinois, 1968).

[34] Ibid., p. 7.

[35] Ibid., p. 20.

revisions should be made, and to determine whether such changes would best be accomplished by amendment or by the calling of a convention. After two years of consideration, the Commission concluded that "a constitutional convention is the best and most timely way to achieve a revised constitution."[36] The Commission recommended that the General Assembly place the question of calling a constitutional convention on the ballot in November, 1968 general election. It further recommended that no other amendments be placed on the ballot, suggesting that "the electorate should not be asked to debate or rule on piecemeal amendments while a constitutional convention is being considered."[37] The Commission also recommended that its life be extended for another two years to provide delegates to the convention, if approved, and members of the legislature with well-researched resource material on salient issues and problems of constitutional revision.

Joint resolutions providing for a referendum on the question of calling a constitutional convention were introduced simultaneously in both houses of the General Assembly during the first week of the 1967 session. As usual a great many other resolutions proposing a wide variety of constitutional amendments were subsequently introduced. The convention call resolutions remained in committee until mid-April. Then Senate Joint Resolution 2 was recommended "do adopt" on April 12 and passed 50-0 six days later. The measure passed the House 150-14 on May 16. Thus, for the first time since 1934, the voters would have the opportunity to express their approval or disapproval of a convention call. The legislature also concurred with the Constitution Study Commission recommendation that no other amendments be submitted to the voters. The convention call would be the only blue ballot proposition in the November, 1968, general election.

The success of the convention call in the General Assembly seems to rest primarily on two factors. Midway through the session the chairman of the Constitution Study Commission, Mrs. Robert Pebworth, suddenly died. Mrs. Pebworth, a former president of the Illinois League of Women Voters, had been one of the "blue ribbon" House members elected in the 1964 at-large election, and she had been re-elected to the House in 1966. Her dedicated and energetic efforts on behalf of the convention call were widely recognized. Passage of the convention resolution was in large part a tribute to her efforts. Secondly, many members were apparently willing to vote for the measure because they felt its chances for popular approval were slim. A convention call, even under Gateway, required a majority of those voting in the election.

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[36] Constitution Study Commission, Report, submitted to the 75th General Assembly, February, 1967, p. 7.

[37] Ibid.

In approving the convention call the legislature did not make any provision or appropriate any funds for insuring adoption of the proposition. As in the past, the campaign was to be a civic matter, and its success or failure would depend upon the response of those elements in the state who had been advocates of constitutional reform. An informal group of supporters was formed almost immediately after adjournment of the General Assembly. During the summer of 1967, members of the League of Women Voters, the Constitution Study Commission, and the Chicago Bar Association, held a series of luncheons with representatives of various organizations interested in passage of the proposition. In October, 1967, a public meeting was organized in Chicago at which representatives of various civic, business, and professional groups listened to presentations by members of the League of Women Voters, the Constitution Study Commission, and representatives of both political parties. At this meeting a steering committee was selected to develop a list of possible chairmen for the campaign committee. At the request of the Committee, Governor Otto Kerner, early in March, announced the appointment of Kingman Douglass, a Chicago investment banker, and William Kuhfuss, president of the Illinois Agricultural Association, as co-chairmen of the Illinois Committee for a Constitutional Convention (ICCC). The governor also announced that Samuel W. Witwer would serve as general counsel of the Committee and named a board of directors. On April 16, the campaign was formally initiated at a luncheon in the governor's mansion in Springfield attended by members of the Committee, interested organizations, political leaders, and members of the press.[38]

The campaign for the convention call was in some important ways an extension of previous efforts at constitutional revision. A statewide citizen's committee made up of a wide assortment of civic and professional groups organized the distribution of campaign literature and sample ballots, the creation of local committees and speaker's bureaus, fund raising, a continuous stream of press releases, and a coordinated media campaign in the weeks prior to the election. In other respects, the campaign departed significantly from previous ones. The convention call was not tied to substantive issues; it was essentially a request for a comprehensive look at the provisions of a document nearly a century old. As such, it coalesced all the forces which had been pressing for constitutional reform intermittently since World War II. A significant number of the individuals and organizations working actively for the convention call had found themselves on opposite sides of the fence on many of the amendment campaigns since Gateway. In 1968 their interests converged. The Illinois Committee for a Constitutional Convention also instituted a number of unusual techniques in coordinating its overall campaign strategy. By relying to a large extent upon opinion polling, the Committee was able to conduct its campaign to maximize voter interest and support in what was to become one of the most successful campaigns for a constitutional proposal in Illinois history.

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[38]Memo from Mrs. Barry Norton, executive secretary of the Illinois Committee for a Constitution, typewritten (n.d.).

A series of statewide polls made by the University of Illinois and by a private research firm engaged by the ICCC led to two strategic campaign decisions. The polls showed an expected low voter awareness of the proposition. However, when asked how they would vote, a solid majority of the respondents indicated they would vote favorably. When asked why they would vote favorably over 40 per cent indicated that the constitution was in need of updating generally; only a negligible percentage suggested specific reasons such as revenue reform or reform of local government. These findings suggested that the public, while generally unaware of the proposition, was in a receptive mood. Furthermore, the data confirmed a previous committee decision to base the campaign on the need to take a good look at an outdated constitution rather than on the basis of issues which might be of concern to the convention. These poll results helped the Committee strategists to decide to gear the campaign to increase voter turnout, reasoning that a high turnout would not only reduce the number of unconscious "no" votes but increase substantially the vote for the proposition. The Committee also decided to keep the campaign separate in the minds of the voters from either of the political parties, special interests, or any specific issue. The campaign theme stressed the need for a convention to examine a document that was "outdated," "old," the "product of a horse-and-buggy era." Voters were simply urged to vote yes on the Blue Ballot. The polls had also shown that since 1952 the Blue Ballot had become a symbol of good government in Illinois, unidentified with any specific issues. A vote for the Blue Ballot was a vote for government reform. The Committee accordingly stressed the Blue Ballot theme in its literature and advertising. The poll results also helped the Committee, with the aid of a public relations firm, to structure its mass media campaign which was concentrated on the last three weeks before the election.[39]

Public support for the convention call was impressive. Both political parties endorsed it along with the state's major newspapers, most incumbents and candidates for major office, and countless civic and professional organizations. Opposition came from the state AFL-CIO, the Illinois State Association of Township Supervisors, and a group known as Save our Suburbs. None of these groups conducted an organized opposition campaign.

Of the 4.7 million people voting in the November, 1968, election, 2.9 million voted "yes" on the convention call--slightly over 60 per cent--well over the necessary majority of those voting in the election. Only 590,000 voters failed to mark their Blue Ballot. The margin of victory, over 600,000 votes, constituted the greatest plurality ever given a constitutional proposal in Illinois.

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[39]Joseph P. Pisciotte, "How Illinois Did It," National Civic Review, LVIII, July, 1969, pp. 291-96.

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